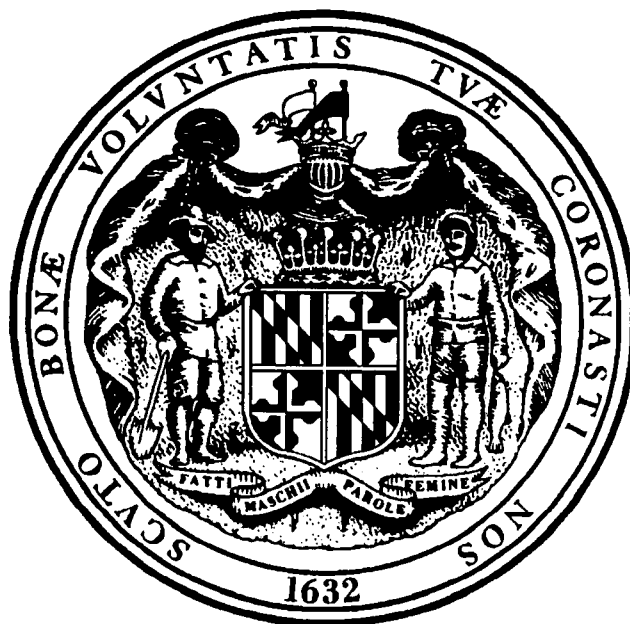
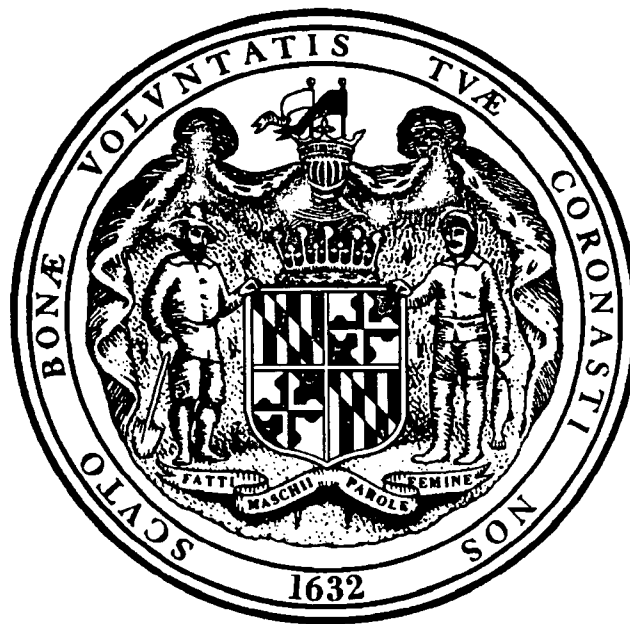
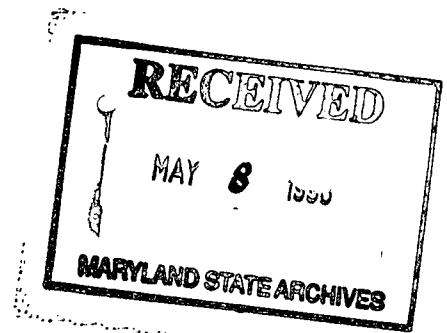


***REPORT  
OF THE  
COMMISSION  
TO  
REVISE THE ELECTION CODE***



**DECEMBER 1997**

***REPORT  
OF THE  
COMMISSION  
TO  
REVISE THE ELECTION CODE***



**DECEMBER 1997**

# **Commission to Revise the Election Code**

## **MEMBERSHIP**

Marie M. Garber, Chairman

The Honorable John C. Arnick  
The Honorable Clarence W. Blount \*  
Samuel Y. Botts, Esq.  
The Honorable Michael J. Collins  
The Honorable David R. Craig  
The Honorable Joseph M. Getty  
David G. Hartlove  
Ronald B. Hickernell  
John T. Willis, Secretary of State

\* Senate President Thomas V. Mike Miller appointed Senator Collins to replace Senator Blount on the Commission on May 28, 1997

## **STAFF**

Department of Legislative Services:

William G. Somerville, Primary Staff  
Ross Goldstein  
Theodore E. King, Jr.  
Carol L. Swan





# **Commission to Revise the Election Code**

*Marie M. Garber, Chairman*

January 14, 1998

The Honorable Parris N. Glendening, Governor  
The Honorable Thomas V. Mike Miller, Jr., President of the Senate  
The Honorable Casper R. Taylor, Jr., Speaker of the House of Delegates  
The Honorable Vernon Boozer, Minority Leader, Senate  
The Honorable Robert Kittleman, Minority Leader, House of Delegates

Gentlemen:

The Commission to Revise the Election Code is pleased to submit this report of its findings and recommendations, as well as a proposed revision of the Maryland Election Code.

The revised code responds to our statutory mandate in Chapter 431 of the Laws of 1996 to produce a “. . . substantive revision of Article 33 . . . to make the law comport with the needs of modern election administration . . . [and] . . . mesh with the realities of current and future technologies, and to clarify the respective roles of election boards and professional administrators at the local and State level . . .”. This report details the goals and methods of our work and makes recommendations that go beyond the scope of legislation to improve the administration of elections. In addition, a number of important issues that had to be left unresolved are identified in the report; these are commended to the General Assembly for their attention.

Without assistance and guidance we had from a host of valuable sources, the quality of our work product would be much diminished. The thanks of the Commission go to those whose input deepened and clarified our understandings, and whose support and assistance made it possible for us to accomplish as much as we did. Foremost among them are the election officials of Maryland, in the twenty-four local jurisdictions and in the State Administrative Board of Elections in Annapolis, and the staff of the Department of Legislative Services assigned to us -- William G. Somerville, Theodore King, Carol Swan, and Ross Goldstein.

In addition, we are indebted to the representatives of organizations that attended our meetings, contributed to our discussions, and corresponded with us; representatives of the Office of the Attorney General, particularly Deputy Attorney General Carmen Shepherd, Chief Counsel for Opinions and Advice Jack Schwartz, and Assistant Attorney General Mary Lunden; Nikki Baines Trella and Amanda LaForge of the Office of the Secretary of State; State Prosecutor Stephen Montanarelli; Curtis B. Gans, Director, Committee for the Study of the American Electorate; the Office of Election Administration of the Federal Election Commission; election authorities in many other states who responded to our requests for information; the League of Women Voters of

January 14, 1998

Page 2

Maryland; Peter Francia of the Department of Political Science at the University of Maryland (who did the registration-deadline study); George Nilson, former Deputy Attorney General and Counsel to the State Board of Elections, now in private practice; and those many other persons who shared with us their special expertise in election law and administration.

We thank you for the opportunity we had to participate in this important work and are available to consult with and assist you as the proposed revision is considered by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads "Marie Garber".

Marie Garber

Chairman

Commission to Revise the Election Code

# REPORT OF THE COMMISSION TO REVISE THE ELECTION CODE

## Origins of the Commission

The Commission to Revise the Election Code was created by the General Assembly as a result of the work of the 1995 Task Force to Review the State's Election Law, a bipartisan body appointed after the 1994 general election to examine and analyze the State's election process and, if deemed appropriate, to make recommendations to improve it.

In its report, issued December 31 1995, the Task Force stated:

*"Among all recommendations received by the Task Force none had a more emphatic sense of urgency than the call for a comprehensive revision of Article 33 of the Annotated Code."*

Moreover, the Task Force found that the current election code:

*"... is generally acknowledged by those who implement its provisions to be obsolete, poorly organized, and plagued by gaps that have been filled on a piecemeal basis by letters of advice and opinions from the Attorney General's Office. The electoral process has moved forward in recent decades, leaving the statutory law far behind. A number of witnesses who appeared before the Task Force, including the State Prosecutor, representatives of the Attorney General, and representatives of the local election boards, attested to its inadequacy."*

Accordingly, the first of the recommendations made by the Task Force was for the formation of a Commission to Revise the Election Code to begin work in mid-1996, with the goal of concluding its work in time for introduction of legislation in the 1998 Session of the General Assembly.

## Statutory Charge

Chapter 431 of the 1996 Session of the General Assembly created the Commission to Revise the Election Code. (See Appendix A) Appointments to the nine-member bipartisan body were made

by the Governor, the Speaker and Minority Leader of the House of Delegates, and the President and Minority Leader of the Senate of Maryland.

In the statute, the Commission was directed to make a comprehensive revision of the Election Code, based on a full review of the current Code and the election process in all of its aspects. Archaic provisions were to be removed, and omissions and contradictions were to be resolved. The revised Code was to be characterized by " . . . clarity, precision, consistence, conformity, completeness, and effectiveness. . ." and to include " . . . substantive structural changes . . . the Commission considers necessary to meet the needs of modern election administration."

### **Goals**

At its first meeting, the Commission to Revise the Election Code defined its goals, all of which had been recommendations of the 1995 Task Force:

- The election code should be understandable and lend itself to easy reference.
- The effectiveness of the State Board should be enhanced. Its grant of authority and its responsibilities should be clearly defined.
- High performance standards should be established for all aspects of election administration and they should be uniformly applied throughout the State. Uniformity, however, should not be imposed so rigidly as to stifle creativity and preclude innovation. Standards established should not be a search for the least common denominator, but rather should assure that compliance with the standards will result in high level performance by all. Finally, there are striking differences between and among Maryland's 24 local jurisdictions, predominant among which is size; these cannot be ignored when devising standards that must be applicable to and feasible for all.

- Use of technology in election administration should be maximized. It is desirable to develop a "total election management system" in which the variety of administrative functions in the election process are tied together in an integrated computer-based system.

### **Early Decisions That Guided the Commission's Procedures**

Early in its deliberations, the Commission also made a number of decisions that would facilitate achievement of its goals and ensure that the final work product would be acceptable to the General Assembly. These included the following:

- For ease of understanding and reference, the Election Code should be rationally organized. Subjects to be covered in the statute should be identified, and provisions relating to each should be brought together in one title. Each title and its subdivisions should be named in a way that reflects its content. Those who will benefit from such organization of the law are those who use it -- election officials, legislators and their staff, other public officials, candidates and campaigners, political activists and civic groups, lobbyists and special interest groups, and the lawyers who counsel all of them.
- The revised Election Code should set policy. Matters that are essentially procedures for carrying out those policies should be in regulations adopted by the State Board, or in guidelines or administrative directives.
- A "Statement of Purpose", defining the aims and intent of the Election Code, should be adopted by the Commission and made part of the statute.
- Standard nomenclature should be established and used throughout the law for all processes, concepts, documents, officials, and other entities.

- The numerous "local" provisions of the current Election Code, enacted at the behest of the legislative representatives of a single county or Baltimore City and applicable only to that subdivision, should be left unchanged.
- The Commission should make no substantive change in the provisions relating to campaign finance, to disclosure by persons doing public business, and to voluntary public contributions for campaign funding. The General Assembly has recently devoted considerable attention to and made substantial revisions of the Election Law as it relates to the funding of campaigns. Moreover, the legislation that created the Commission and framed its charge did not mention campaign finance.
- Any statutory change adopted by the Commission, but deemed to be potentially controversial, should not be included in the full revised Election Code but will be presented as a separate bill. The Commission should be guided by the advice of its legislative members in making decisions as to which proposals should be in separate bills.
- The Commission should receive input from many sources. Some would be requested by the Commission and some would be unsolicited; all would be useful in deepening understanding of the issues we focus on. The Commission should maintain continuous contact with the State and local election authorities, invite their contributions on all subjects considered and involve them in our discussions. The Commission should compile a mailing list of all persons and groups that express interest in its work, send them notice of all meetings, make available to them all documents created or received by the Commission, and invite their input and dialogue. For certain subject areas the Commission should invite persons of

expertise to address its meetings. It also should look to the statutes and practices of other States for guidance in framing proposals to respond to Maryland's needs.

- Provisions of Article 33 relating to municipalities should not be changed unless there is a clear consensus from local officials for change.
- The effective date of the revised Election Code will be January 1, 1999, the beginning of the quadrennial election cycle that starts after the next gubernatorial election.

### **Revised Election Code**

The revised Election Code will be presented to the General Assembly as cross-filed bills. Two appendices to this report summarize the content of the revised Election Code: the Outline (Appendix B), which reflects organization of the material included; and the Summary of Substantive Changes to Article 33 (Appendix C), which details the differences between the current and the proposed Code. The full text is presented to the Governor and the General Assembly with this report.

Eight proposals are submitted as separate bills. A list of them and a summary of the content of each appears as Appendix D of this report. With each bill, when presented to the General Assembly, will be a statement of the Commission's reasons for making the proposal.

### **Recommendations Other Than Legislation**

#### ***1. Voter Registration Systems***

A troublesome aspect of the voter registration system is the lack of currency in the addresses of individual voters. As a whole, America, including Maryland, is a mobile society. In some parts of the State, particularly the large jurisdictions which together constitute the bulk of the voter registry, mobility is high volume and movers seldom take the initiative to notify their election office

of the change of address.

When an election approaches, it is apparent that many addresses on the voter registry are out of date. Candidates who mail campaign literature to constituents find large quantities returned to them as undeliverable; jurisdictions that mail a pre-election specimen ballot to voters' residences experience the same return. At the polls, tens of thousands of voters throughout the State record a changed address on the Voting Authority Card which is not processed and incorporated into the voter registry until after election -- a circumstance that results in substantial numbers of people voting a ballot that does not conform to their current residence.

Two places people usually *do* notify when they move are the United States Postal Service (USPS) to assure they will receive their mail, and the Motor Vehicle Administration (MVA) to update the driver's license, on which they depend for identification.

Recognizing that the incorrectness of voters' addresses could call the validity of an election in question, and that it clearly results in needless mailing costs for candidates and for election authorities, the Commission recommends that the State Board use the various methods available for improving the currency of voter addresses.

- Exploit the opportunities of the National Voter Registration Act (NVRA) for placing voters on an inactive list as a result of the return of routine election office mailings. (We understand that the State Board, working through an interagency task force created by the Governor and chaired by the Secretary of State, already has instituted such a program.)
- Develop a system of obtaining all changes of address promptly from the MVA. NVRA *requires* that applicants for driver's licenses be offered voter registration as part of the application form; that method of registration now accounts for more new



registrations than any other method utilized. While the MVA forwards changes of address made at MVA by already-registered drivers it does not communicate changes of address made by phone. If an arrangement for receiving *all* change-of-address information promptly could be made, perhaps electronically, it would offer substantial opportunity for improved address currency at election time.

- State Board regulations authorize the use of the National Change of Address (NCOA) program of the USPS, but the local boards have not used the program. The Commission heard a presentation by the Postal Service on this program, but did not feel it should be included in our proposed legislation since it could be put in place without a specific statutory mandate.
- A statewide computer-based voter registration system -- already the subject of a feasibility study by the State Board -- could make it possible to transfer a registration in the event of an intrastate move from one county to another rather than the present requirement for such a voter to reregister at the new address and that a cancellation notice be sent to the former county of residence. It could also identify duplicate registrations which have resulted from re-registration that did not trigger a cancellation of registration in the county of former residence.

The Commission recognizes that each of these methods is not without administrative problems. Conferring with postal authorities and with other States that use the methods could give Maryland the benefit of their experience in surmounting the administrative difficulties in order to gain the benefits these programs afford. We believe the effort is worthwhile. One national authority on voter registration suggested that the cost savings of these programs, once fully implemented, could be substantial enough to pay for themselves after four elections. (See highlights of

presentation by Curtis Gans, Director, Committee for the Study of the American Electorate, Appendix J.)

## ***2. Recommendations Relating to Petition Verification and Continuation of Party Registration***

Two requests that came to the Commission very late, from persons seeking changes in ballot access and establishment of new parties, are included here as recommendations:

- The State Board should establish standards and criteria for rejection of signatures on a petition, which would be uniformly applied in all local election offices. In each office a record should be made of the petition verification, including the number of signatures deemed valid, the number deemed invalid, the reasons (by category) for invalidation, and the number of invalid signatures in each category. The record should be available to the petitioning entity (e.g. a candidate, a proposed new party, or a ballot question sponsor). We believe that such records now are kept by at least some local boards.
- An individual who records on the individual's original voter registration a party affiliation that does not represent a party that meets the requirements of a political party as defined in Maryland law, or who changes party affiliation to such an affiliation, should be counted among the registrants of such a party when and if it qualifies. We see no reason why such a person should be denied that party identity, nor why he or she should not be counted among the registrants of the new party. The only way this can now be done, in most if not all Maryland counties, is by a manual search of the original voter registration records. We recommend that the State Board, as it studies the feasibility of a Statewide voter registration database and moves into

its design phase, include this capability in their proposed system.

### **Unfinished Business**

Four issues that came before the Commission were left unresolved, both because the time for consideration was too short and because the issues are of a type better left to elected officials. We refer them to the General Assembly. Two of them relate to resolution of election disputes, and the impetus for raising the questions came from the litigation following the 1994 gubernatorial election. The third concerns offenses defined in the election article, and penalties imposed on those who commit them. The last relates to the timing of the presidential primary election.

***1. Should it be possible to contest an election based on a post-election contention that certain voters were improperly registered?***

This question was brought to us by George A. Nilson, a former Deputy Attorney General and Counsel to the State Board of Elections, now in private practice. (See Nilson letters to the Commission, August 29 1996 and November 20, 1997 (Appendix L). Mr. Nilson's position is that

*"... an unsuccessful candidate ought not be permitted to litigate the correctness of the registration rolls after election day and after the ballots have been cast . . . . The time for correcting the registration rolls is before the elections, or in certain instances on election day at the polls through challengers.*

*"My recommendation to the Commission was that it propose the addition of an explicit provision to the Election Code barring reliance on post-election day challenges to registration of voters in election contests, subject only to possible exceptions for situations where the challenger alleges and is able to prove that: (1) the opposing candidate directly or indirectly participated in causing or bringing about the challenged improper registrations; or (2) the improper registrations were caused by the affirmative fraud of election officials, as opposed to negligence, sloppiness, mistakes or the like."*

The current election code has no explicit provision to this effect. Neither does the revised code, although it does include opportunity for challenging a registration both before election day and

for challenging identity of a prospective voter at the polls, and for resolution of such disputes.

In view of the confusion in November 1994 in the local election offices, the Commission believes that the General Assembly should take up this issue. We note, as well, that this ground for election contest challenge is not unique to Maryland. In Louisiana and in California, members of Congress seated more than a year ago are still involved in similar challenges and have been forced to expend hundred of thousands of dollars to defend their legitimacy.

***2. What forum should decide a contested election for Governor/Lieutenant Governor?***

This question arose out of the case of Sauerbrey v. SABEL, a contest brought and resolved in Anne Arundel County Circuit Court.

Both Mr. Nilson, who represented Governor Glendening, and Deputy Attorney General Carmen Shepherd, who worked on the brief to present the State's position, discussed the question with the Commission (See Appendix L, and also a portion of the pleading that reflects the State's position, Appendix M.) Both believe that the Constitution vests authority to resolve a contest for the office of Governor in the House of Delegates.

The discussion made clear to the Commission that there could be serious problems if a similar election contest again occurs:

- Had the decision of the Anne Arundel County Circuit Court in the 1994 challenge been appealed, both Deputy Attorney General Shepard and Mr. Nilson believe that the Court of Appeals might have ruled that the House of Delegates was the appropriate forum for resolution. By that time, Inauguration Day might have come and gone.
- If the contest is to be resolved in the House of Delegates, *which* House? Those members still in office from the previous election four years ago, or the newly

elected House?

- Is the House of Delegates the appropriate forum for resolution of a contested gubernatorial election? Mr. Nilson believes not, and suggests a Constitutional Amendment transferring authority to the Courts, for the following reasons:

*"(a) The need to have a decision rendered by a decision-maker accustomed to resolving factual disputes.*

*(b) The desirability of having a matter of such importance resolved by an entity that is perceived to be apolitical, and hopefully is apolitical.*

*(c) The importance of having the decision made by an entity and in a proceeding in which the public will have confidence that its right to decide who the next Governor of the State will be has not somehow been taken away from it.*

*(d) The need to have the decision committed to an entity capable of acting swiftly, so that the questions and issues presented can be decided before the time set by the Constitution for the Governor to commence his or her term of office."*

The Commission agreed that should such a contest be filed, the potential for grave consequences is real unless these ambiguities are resolved. We suggest that the General Assembly set up a special committee of its members to study the question and to propose appropriate Constitutional and/or statutory changes. Meantime, the General Assembly should adopt rules and develop procedures for coping with a gubernatorial election contest should one be referred to them.

### **3. Title 16, Offenses and Penalties.**

The Commission focused on this last title of its revised code too late to give it the attention it deserved in order to make judgments regarding revision. Accordingly, the title -- with few

exceptions -- is a rewrite of provisions of the source law.<sup>1</sup>

Even our cursory review of provisions relating to offenses and penalties made clear that offenses should be categorized to reflect rational differentiation based on severity of the offense, and penalties should conform to the nature of the offense to which they relate. Many penalties as now stated are seriously outdated and so ridiculously low they represent little or no deterrent.

To make this revision of the Election Code complete, the Commission urges the General Assembly to address the subject of Offenses and Penalties relating to elections.

At the suggestion of the Attorney General's office, we sought review and input from the State Prosecutor and from the State's Attorney Coordinator. The State Prosecutor responded, and his observations and suggestions will be helpful to those who update the title, particularly with respect to grouping of offenses in categories and conforming penalties to them. (See Appendix N, letter, with enclosure, from State Prosecutor Stephen Montanarelli) The State's Attorneys deferred to the State Prosecutor on this issue, noting that election law violations commonly are referred to that office.

#### ***4. Presidential Primary.***

The Commission discussed the timing of primary elections in presidential election years, noting that turnout is usually quite low. A summary of the issues involved, including the concept of a regional primary, is included in Appendix K.

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<sup>1</sup> Among the changes from current law: Repeal of the provision which prohibits a person from allowing his ballot to be seen by another; repeal of the provision that makes the distribution by an election judge of a list of persons who have or have not voted a penitentiary offense; creation of a new felony offense -- tampering with an electronic voting system, which could corrupt an entire election -- with a fitting penalty for violation.

### **Conclusion: The Need for Adequate Funding**

The 1995 Task Force to Review the State's Election Law, which urged the creation of this Commission, made clear that to rebuild and upgrade Maryland's election system would require a commitment from the State that would include substantial financial support. Task Force Chairman George Beall said when he transmitted the group's report to the Governor:

*"While the Report of this Task Force contains other thoughtful, particularized recommendations for improvement of the electoral process which should be reflected in a comprehensive revision of the Election Code, the central recommendation is that the Governor and the General Assembly recognize a compelling State responsibility for the organization, administration, and financing of Maryland's election systems.*

*There is obviously monetary cost associated with improving the way in which voters are registered and elections are conducted. There are also cost savings that will flow automatically from better technology and management. Regrettably, the time has now come for the State to spend money to effect long overdue modernization, professionalization, and reorganization.*

*The Task Force emphatically invites leadership from the State in acknowledging, as a matter of public policy, the current need to commit the resources necessary to implement these recommendations. The legislative members of this Task Force have already demonstrated their own commitment to this important mission by generously giving of their time to attend every public meeting and offering experienced, constructive counsel. Your equivalent support will assure attainment of a more modern, better organized and well administered elections system for the entire State of Maryland."*

This Commission concurs in the Task Force position. Throughout our work, and particularly in the decision-making, we realized that the purposes reflected in our draft legislation and recommendations will not be achieved without adequate financial support. Specifically, if the State Board of Elections is to have the professional expertise to effectively direct the work of the local boards; if the use of technology is to be expanded to its maximum potential; if citizens are to trust

and respect their election process; if, as the Governor said recently, Maryland's administration of elections is to be "a national model to be emulated by other states", then adequate funding is essential.



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## **APPENDIX A**

### **CHAPTER 431**

**(House Bill 127)**

**AN ACT concerning**

#### **Commission to Revise the Election Code**

**FOR** the purpose of creating a Commission to Revise the Election Code; specifying the composition, powers, and duties of the Commission; providing for the staffing of the Commission; requiring the Commission to report its findings and recommendations, including suggested legislative changes, to the Governor and the General Assembly by a certain date; providing for the termination of this Act; and generally relating to the establishment of the Commission to Revise the Election Code.

**BY** adding to

Article 41 – Governor – Executive and Administrative Departments

Section 18-309

Annotated Code of Maryland

(1993 Replacement Volume and 1995 Supplement)

#### **Preamble**

**WHEREAS,** During the 1995 Session, the General Assembly enacted legislation to establish the Task Force to Review the State's Election Law to analyze Maryland's election process in the wake of the contentious 1994 general election; and

**WHEREAS,** Over the course of the summer and fall of 1995, the Task Force to Review the State's Election Law received considerable testimony from individuals involved in the State's election process; and

**WHEREAS,** The comments and testimony of State and local election law officials and other individuals involved in the administration and enforcement of the election laws consistently affirmed that a comprehensive, substantive revision of Article 33 of the Annotated Code is required in order to remove archaic provisions and resolve omissions and contradictions that exist in the current law; and

**WHEREAS,** The usual Code Revision process is limited to making stylistic, restructuring, nonsubstantive changes in the law, but not substantive revisions; and

**WHEREAS,** A major substantive revision of Article 33 is required to make the law comport with the needs of modern election administration, to make the law mesh with the realities of current and future technologies, and to clarify the respective roles of election boards and professional administrators at the local and State level; and

**WHEREAS,** The Task Force did not have the time needed to accomplish the level of significant rewriting of the election law that is so urgently required; now, therefore,

**SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,** That the Laws of Maryland read as follows:

**Article 41 - Governor - Executive and Administrative Departments**

18-309.

(A) THERE IS A COMMISSION TO REVISE THE ELECTION CODE.

(B) THE COMMISSION SHALL BE COMPOSED OF NINE MEMBERS APPOINTED AS FOLLOWS:

(1) TWO INDIVIDUALS DESIGNATED BY THE SPEAKER OF THE HOUSE OF DELEGATES AND ONE INDIVIDUAL DESIGNATED BY THE MINORITY LEADER OF THE HOUSE OF DELEGATES;

(2) TWO INDIVIDUALS DESIGNATED BY THE PRESIDENT OF THE SENATE OF MARYLAND AND ONE INDIVIDUAL DESIGNATED BY THE MINORITY LEADER OF THE SENATE; AND

(3) THREE INDIVIDUALS DESIGNATED BY THE GOVERNOR ~~REFLECTING THE DEMOGRAPHIC MAKEUP OF THE STATE, INCLUDING ONE INDIVIDUAL APPOINTED BY THE GOVERNOR FROM A LIST OF THREE NAMES SUBMITTED BY THE CHAIRPERSON OF THE REPUBLICAN PARTY, AT LEAST ONE OF WHOM SHALL BE A MEMBER OF THE MINORITY PARTY.~~

(C) THE GOVERNOR SHALL DESIGNATE THE CHAIRMAN OF THE COMMISSION.

(D) A MEMBER OF THE COMMISSION MAY NOT RECEIVE COMPENSATION FOR SERVING ON THE COMMISSION, BUT IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(E) THE COMMISSION SHALL:

(1) REVIEW ARTICLE 33 OF THE ANNOTATED CODE OF MARYLAND, AND OTHER STATUTORY LAW RELATING TO ANY ASPECT OF THE ELECTIONS PROCESS, FOR CLARITY, PRECISION, CONSISTENCY, CONFORMITY, COMPLETENESS, AND EFFECTIVENESS;

(2) REVIEW THE SELECTION, OPERATION, AND ORGANIZATION OF THE STATE ADMINISTRATIVE BOARD OF ELECTION LAWS AND THE LOCAL BOARDS OF SUPERVISORS OF ELECTIONS;

(3) REVIEW THE LAW RELATING TO THE INTEGRATION OF COMPUTER TECHNOLOGY INTO THE ADMINISTRATION OF ELECTIONS;

(4) REVIEW THE LAW RELATING TO THE CONDUCT OF ELECTIONS, INCLUDING:

(I) POLLING PLACE SELECTION AND PROCEDURES PRIOR TO, DURING, AND AFTER AN ELECTION;

(II) STANDARDS FOR VOTING SYSTEMS;

(III) REGISTRATION OF VOTERS;

(IV) THE SELECTION, TRAINING, AND COMPENSATION OF ELECTION JUDGES;

(V) THE ABSENTEE VOTING PROCESSES;

(VI) POST-ELECTION PROCEDURES; AND

(VII) ANY OTHER MATTERS THAT THE COMMISSION CONSIDERS APPROPRIATE; AND

(5) SUBMIT A COMPREHENSIVE REVISION OF THE ELECTION CODE THAT REMOVES ARCHAIC PROVISIONS, RESOLVES OMISSIONS AND CONTRADICTIONS, AND INCORPORATES SUBSTANTIVE, STRUCTURAL CHANGES IN THE CURRENT LAW THAT THE COMMISSION CONSIDERS NECESSARY TO MEET THE NEEDS OF MODERN ELECTION ADMINISTRATION.

~~(F) THE COMMISSION MAY EXPEND FUNDS IN ACCORDANCE WITH THE STATE BUDGET.~~

~~(G) THE COMMISSION SHALL EMPLOY A STAFF DIRECTOR WHO SHALL RECEIVE COMPENSATION AS PROVIDED IN THE BUDGET.~~

~~(H) THE DEPARTMENT OF LEGISLATIVE REFERENCE SHALL PROVIDE STAFF SERVICES TO THE COMMISSION.~~

~~(I) THE COMMISSION SHALL ISSUE A FINAL REPORT OF ITS FINDINGS AND RECOMMENDATIONS, INCLUDING A DRAFT REVISION OF THE ELECTION CODE, TO THE GOVERNOR AND, SUBJECT TO § 2-1312 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 31, 1997.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1996. It shall remain effective until December 31, 1997, and at the end of December 31, 1997, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved May 14, 1996.

# **Commission to Revise the Election Code**

*Marie M. Garber, Chairman*

**December 9 1997**

## **OUTLINE - REVISED ARTICLE 33**

| <b><u>Title No.</u></b> | <b><u>Name of Title</u></b>                     |
|-------------------------|---|
| 1.                      | Definitions and General Provisions              |
| 2.                      | Powers and Duties of the State and Local Boards |
| 3.                      | Voter Registration                              |
| 4.                      | Political Parties                               |
| 5.                      | Candidates                                      |
| 6.                      | Petitions                                       |
| 7.                      | Questions                                       |
| 8.                      | Elections                                       |
| 9.                      | Voting  |
|                         | Subtitle 1 - Voting Systems                     |
|                         | Subtitle 2 - Ballots                            |
|                         | Subtitle 3 - Absentee Voting                    |
| 10.                     | Polling Places                                  |
|                         | Subtitle 1 - Sites                              |
|                         | Subtitle 2 - Election Judges                    |
|                         | Subtitle 3 - Procedures                         |
| 11.                     | Canvassing                                      |
| 12.                     | Contested Elections                             |
| 13.                     | Campaign Finance                                |
| 14.                     | Disclosure by Persons Doing Public Business     |
| 15.                     | Public Financing Act                            |
| 16.                     | Offenses and Penalties                          |

## **APPENDIX B**

### **ARTICLE 33 - ELECTION CODE**

#### **Title 1. Definitions and General Provisions**

##### **Subtitle 1. Definitions.**

##### **1-101. Definitions.**

- (a) Generally.
- (b) Absentee ballot.
- (c) Authorized candidate campaign committee.
- (d) Ballot or official ballot.
- (e) Ballot face.
- (f) Ballot issue committee.
- (g) Ballot style.
- (h) Campaign manager.
- (i) Candidate.
- (j) Contest.
- (k) Contribution.
- (l) County.
- (m) Document Ballot.
- (n) Driver's license.
- (o) Elderly.
- (p) Election.
- (q) Electronic storage format.
- (r) Executive Director.
- (s) Expenditure.
- (t) Handicapped.
- (u) Independent expenditure.
- (v) Infamous crime.
- (w) Local board.
- (x) Majority party.
- (y) Partisan organization.
- (z) Political committee.
- (aa) Political party.
- (bb) Precinct.
- (cc) Precinct register.
- (dd) Principal minority party.
- (ee) Principal political parties.
- (ff) Registered voter.
- (gg) Sample ballot.
- (hh) Slate.
- (ii) Specimen ballot.

- (jj) State Board.
- (kk) Treasurer.
- (ll) Voting machine.
- (mm) Voting machine ballot.
- (nn) Voting system.
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## **Subtitle 2. Statement of Purpose.**

- 1-201. Statement of purpose.

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- 1-301. Computation of time.
  - (a) Generally.
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- 1-302. Transmittal of document by facsimile.
  - (a) Generally.
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# **Title 2. Powers and Duties of the State and Local Boards**

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- 2-101. In general.
  - (a) Membership.
  - (b) Office; staff.
  - (c) Appointment.
  - (d) Oath.
  - (e) Political party affiliation.
  - (f) Term.
  - (g) Vacancy.
  - (h) Chairman.
  - (i) Compensation.
- 2-102. Powers and Duties.
  - (a) Generally.
  - (b) Specific powers and duties.
- 2-103. Executive Director.
  - (a) Generally.
  - (b) Specific powers and duties.
- 2-104. Statewide Biennial Preelection Meeting.
  - (a) Generally.



- (b) Mandatory attendance; exceptions.
  - (c) Time; place; purpose.
  - (d) Reimbursement of expenses.
- 2-105. Judicial Proceedings; Intervention by State Board.
- 2-106. Records Management.
  - (a) Generally.
  - (b) Use of record as evidence in court.

## **Subtitle 2. Local Boards**

- 2-201. Organization.
  - (a) Generally.
  - (b) Membership.
  - (c) Appointment.
  - (d) Term.
  - (e) Oath.
  - (f) Removal.
  - (g) Appointment process.
  - (h) Filling of vacancies.
  - (i) President of local board.
  - (j) Special provision - Prince George's County.
- 2-202. Powers and Duties.
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  - (b) Powers and duties.
  - (c) Special provision - Garrett County.
- 2-203. Local Government Funding.
- 2-204. Compensation of Local Board Members.
  - (a) Regular members.
  - (b) Substitute members.
- 2-205. Counsel to local board.
  - (a) Generally.
  - (b) Compensation.
  - (c) Additional compensation.
- 2-206. Election director.
  - (a) Powers and duties.
  - (b) Appeal to local board.
- 2-207. Local board employees.
  - (a) Applicability.
  - (b) Method of funding not affected.
  - (c) Personnel system requirements.
  - (d) Voter registration required.
  - (e) Restrictions.

### **Subtitle 3. Provisions Generally Applicable.**

- 2-301. Bar to Political Activities.
  - (a) Applicability.
  - (b) Generally.
- 2-302. Hours of Business.
  - (a) State Board.
  - (b) Local boards.
- 2-303. Precincts.
  - (a) Generally.
  - (b) Period in which changes may not be made.
  - (c) Boundaries.
  - (d) Notice of change.
  - (e) Changes before and after decennial census.
  - (f) Emergency changes.
  - (g) Regulations.

## **Title 3. Voter Registration**

### **Subtitle 1. Registration - Generally**

- 3-101. Authority.
  - (a) Local board authority.
  - (b) Continuous registration.
  - (c) Voter registry.
  - (d) Registration to be permanent.
- 3-102. Qualifications for voter registration.
  - (a) Generally.
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### **Subtitle 2. Methods of Application**

- 3-201. Applying to register to vote.
- 3-202. Voter registration application.
  - (a) Statewide voter registration application.
  - (b) National voter registration application.
  - (c) Change of name, address, or party affiliation using voter registration applications.
- 3-203. Application for registration at motor vehicle administration.
  - (a) In general.
  - (b) Application; content.
  - (c) Change of address.
  - (d) Forwarding information to State election officials.

- (e) Failure to register to vote.
- 3-204. Application for registration at voter registration agency.
  - (a) Designation.
  - (b) Duties of agencies; registration documents.
  - (c) Return of registration application by applicant.
  - (d) Forwarding of registration application to election officials.
  - (e) Individuals with disabilities.
  - (f) Conduct of services providers.
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### **Subtitle 3. Administration of Registration.**

- 3-301. Processing voter registration applications.
  - (a) Receipt of registration applications by local boards.
  - (b) Qualified applicants.
  - (c) Notification of voters.
- 3-302. Registration closing.
  - (a) When registration is closed.
  - (b) Receipt of applications after registration is closed - generally.
  - (c) Same - exceptions.
- 3-303. Change of party affiliation.
  - (a) Generally.
  - (b) Change of residence to different county.
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- 3-304. Change of name or address.
  - (a) Notification of change of name or address.
  - (b) Processing requests for name and address change.

### **Subtitle 4. Municipal Registration.**

- 3-401. Definition.
- 3-402. Applicability.
- 3-403. Municipal registration procedure.
  - (a) Generally.
  - (b) Request for development of universal registration plan.
  - (c) Duty of local board to respond.
  - (d) Initial meeting.
  - (e) The plan.
  - (f) Certified list of registered voters.
  - (g) Supplemental list maintained by municipal corporation.
  - (h) Removal of voter from supplemental voter registry.
  - (i) Reimbursement of local board.
  - (j) Voter registration Forms.
  - (k) Duty of State Board to cooperate.

## **Subtitle 5. Voter Registry**

- 3-501. Custody of voter registry.
- 3-502. Removal of voters from registry.
- 3-503. Programs to identify changes of address.
- 3-504. Change of address information; procedures.
  - (a) Definitions.
  - (b) Change of address; same jurisdiction.
  - (c) Change of address outside the county.
  - (d) Duty to correct.
  - (e) Removal from registry.
  - (f) Inactive list.
- 3-505. Information from other agencies.
  - (a) Information reported to State Board.
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- 3-506. Inspection of registration records.
  - (a) Generally.
  - (b) Regulations.
- 3-507. Copies of registration lists.
  - (a) Generally.
  - (b) Adoption of regulations.
  - (c) Prohibited acts.
- 3-508. Maintenance and storage of voter registration records.
  - (a) Registration records.
  - (b) Retention and storage of records concerning programs for registry accuracy and currency.
- 3-509. Reports of registration by local boards; statement or registration by State Board.
  - (a) Reports of registration.
  - (b) Statement of registration.
  - (c) Duty to provide reports and other registration data.
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- 3-601. Temporary certificate of registration.
  - (a) Generally.
  - (b) Issuance of temporary certificate.
  - (c) Procedures to be adopted.
- 3-602. Challenges.
  - (a) Who may challenge.
  - (b) Challenge procedures.
  - (c) Challenge hearings; notice.
  - (d) Hearing procedures.
  - (e) Hearing decision.

- 3-603. Appeal of registration denial.
- (a) Judicial review.
  - (b) Role of the court.
  - (c) Determination of residency.
  - (d) Appeal to Court of Special Appeals.

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### **Subtitle 1. Formation of Political Parties**

- 4-101. Applicability.
- 4-102. New political parties.
- (a) Formation.
  - (b) Requirements of petition.
  - (c) Filing of petition.
  - (d) Role and responsibilities of State Board.
  - (e) Constitution and bylaws.
  - (f) Nomination of candidates.
- 4-103. Loss of status as a political party.
- (a) Retention of status.
  - (b) Notification by State Board.
  - (c) Effect of loss of status.

### **Subtitle 2. Political Party Governing Bodies**

- 4-201. Political party State central committee.
- (a) Generally.
  - (b) Selection of chairman.
  - (c) Rules of procedure.
- 4-202. Composition of local central committees - generally.
- (a) Election of members of county central committee.
  - (b) Selection of chairman.
  - (c) Residency of members.
  - (d) Residency of member selected to fill vacancy.
  - (e) Filling of vacancies.
  - (f) Tenure of members.
- 4-203. Composition of central committees - local provisions.
- (a) Anne Arundel County.
  - (b) Baltimore City.
  - (c) Baltimore County.
  - (d) Calvert County.
  - (e) Carroll County.
  - (f) Montgomery County.

- (g) Prince George's County.
- 4-204. Constitution and bylaws.
  - (a) Adoption.
  - (b) Required provisions.
  - (c) Adoption of constitution and bylaws by county central committee of a principal political party.
  - (d) Filing.
  - (e) New political parties.
- 4-205. Prohibited practices.
  - (a) Prohibition on incorporation.
  - (b) Exclusive authority of party central committee.
  - (c) Penalty.

## **Title 5. Candidates**

### **Subtitle 1. General Provisions.**

- 5-101. In general.
  - (a) Applicability.
  - (b) Compliance required.

### **Subtitle 2. Qualifications.**

- 5-201. In general.
- 5-202. Residency requirement.
- 5-203. Voter registration and party affiliation.
  - (a) Voter registration required.
  - (b) Party affiliation - exception for judicial and county board of education Candidates.
- 5-204. Candidacy for more than one office.
  - (a) Public office.
  - (b) Party office.
  - (c) Candidacy for both party office and public office.
- 5-205. Governor and Lieutenant Governor unit.
  - (a) Designation.
  - (b) Filing as a unit.
  - (c) Listing on the ballot.

### **Subtitle 3. Certificate of Candidacy.**

- 5-301. In general.
  - (a) In general.
  - (b) Determination by State or local board.

- (c) Listing of name on ballot.
- (d) Petition candidates.
- (e) Write-in candidates.
- (f) Exception for appellate judges.
- (g) Exception for candidates nominated by national party presidential nominating convention.

5-302. Filing.

- (a) On form.
- (b) Filing with State Board.
- (c) Filing with local board.

5-303. When filed.

- (a) Generally.
- (b) Special election
- (c) Write-in candidate.

5-304. Manner of filing.

- (a) Manner of filing.
- (b) Filing other than in person.
- (c) Content.
- (d) Additional requirements.
- (e) Acceptance by appropriate board.

**Subtitle 4. Filing Fees.**

5-401. Amount.

- (a) In general.
- (b) Specific amount.
- (c) Waiver of filing fee.

5-402. Return of filing fees.

- (a) Candidate entering military service.
- (b) Return for good cause.

5-403. Disposition of filing fees.

- (a) Generally.
- (b) Fees received by local board.
- (c) Fees received by State Board.

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5-501. Scope.

5-502. Time for withdrawal.

- (a) Generally.
- (b) Special elections.

5-503. Place and manner of withdrawal.

- (a) Generally.
- (b) Special elections.

- 5-504. Effect of withdrawal of candidacy.  
    (a) Generally.  
    (b) Name to appear on ballot; exception.

**Subtitle 6. Qualification for Primary Election Ballot.**

- 5-601. Candidates qualifying.

**Subtitle 7. Nomination.**

- 5-701. In general.  
5-702. Nomination by primary election.  
5-703. Nomination by petition.  
    (a) Scope.  
    (b) In general.  
    (c) Declaration of intent.  
    (d) Certificate of candidacy.  
    (e) Petition signatures requirements.  
    (f) Time and place for filing petition signatures.  
5-704. Write-in candidates.  
5-705. Certificate of nomination or election after primary election.  
    (a) In general.  
    (b) Issuance of certificates of nomination.  
    (c) Issuance of certificate of election.  
5-706. Candidate defeated in primary election.  
    (a) Scope.  
    (b) Candidacy not allowed.

**Subtitle 8. Declination of Nomination.**

- 5-801. Declination of nomination.  
    (a) In general.  
    (b) When and where filed.  
    (c) Effect of declination.

**Subtitle 9. Vacancies in Candidacy Occurring Before a Primary Election.**

- 5-901. Offices other than Governor and Lieutenant Governor - no filed candidate.  
    (a) In general.  
    (b) Scope.  
    (c) How filled - offices covering more than one county.  
    (d) Other offices.  
    (e) Certificate of designation required from central committee.  
    (f) Certificates of candidacy required of nominee to fill vacancy.



- 5-902. Governor and Lieutenant Governor - vacancy in candidacy before the filing deadline.
- (a) Generally.
  - (b) Time of filing.
- 5-903. Lieutenant Governor - vacancy in candidacy occurring after the filing deadline.
- (a) Designation of successor candidate.
  - (b) Certificate of candidacy required.
  - (c) Death or disqualification occurring less than 10 days before the primary - effect.
- 5-904. Governor - vacancy in candidacy after the filing deadline when more than one Governor and Lieutenant Governor unit files for nomination.
- (a) Scope.
  - (b) In general.
  - (c) Certificate of candidacy required.
  - (d) Death or disqualification of candidate for Governor occurring less than 10 days before the primary election - effect.
- 5-905. Governor and Lieutenant Governor - vacancy in candidacy after the filing deadline when only one Governor and Lieutenant Governor unit files for nomination.
- (a) In general.
  - (b) Designation of successor candidate by State central committee.
  - (c) Selection of successor nominee for Lieutenant Governor.
  - (d) Certificates of designation and candidacy required.

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- 5-1001. Certificate of nomination to fill vacancies.
- (a) Local board.
  - (b) State Board.
  - (c) State Board to notify local boards.
  - (d) Prior certificate void.
- 5-1002. Statewide offices.
- (a) Scope.
  - (b) Filled by State central committee.
- 5-1003. Shared district candidates - more than one county in a congressional or General Assembly district.
- (a) Scope.
  - (b) In general - filling the vacancy.
- 5-1004. Local offices and districts entirely within one county.
- (a) In general.
  - (b) Time for filling.
  - (c) How filled.
  - (d) Tie votes.
- 5-1005. Governor and Lieutenant Governor.
- (a) Scope.
  - (b) Lieutenant Governor - vacancy in nomination - designation of successor nominee for Lieutenant Governor.

- (c) Governor - vacancy in nomination - disqualification of Lieutenant Governor nominee and selection of successor nominee for Governor.

#### **Subtitle 11. Vacancies in Candidacy for Petition Candidates.**

##### **5-1101. Governor and Lieutenant Governor units.**

- (a) In general.
- (b) Vacancy occurring prior to the filing deadline for the primary election.
- (c) Vacancy in nomination occurring after the deadline for filing for a primary election.
- (d) Late vacancy - Governor and Lieutenant Governor unit to remain on the ballot..
- (e) Certificate of nomination.

##### **5-1102. Candidates other than Governor and Lieutenant Governor.**

- (a) In general.
- (b) Filling a vacancy in nomination.
- (c) Filing of certificates.

#### **Subtitle 12. Miscellaneous Provisions.**

##### **5-1201. Effect of failure to designate successor candidate and file certificate.**

- (a) Governor and Lieutenant Governor candidates.
- (b) Candidates for other offices.

##### **5-1202. Certificate of candidacy and payment of filing fee required of successor candidates.**

##### **5-1203. Qualifying for general election ballot.**

- (a) In general.
- (b) Certification of nominee's to the ballot.

##### **5-1204. Revising the ballot.**

- (a) Sufficient time.
- (b) Insufficient time.
- (c) Use of stickers on voting machine.

#### **Subtitle 13. Late Vacancies Before the General Election.**

##### **5-1301. Applicable to offices other than Governor or Lieutenant Governor.**

- (a) Scope.
- (b) Not applicable to Governor and Lieutenant Governor.

##### **5-1302. Deadline for filing certificate of designation and consequence of vacancy occurring after deadline.**

- (a) Deadline.
- (b) Vacancy created.

##### **5-1303. Canvass and certification of votes when late vacancy occurs.**

- (a) Vacancy after primary election.
- (b) Vacancy after general election.

## **Title 6. Petitions**

### **Subtitle 1. Definitions and General Provisions.**

#### **6-101. Definitions.**

- (a) In general.
- (b) Affidavit.
- (c) Chief election official.
- (d) Circulator.
- (e) Election authority.
- (f) Legal authority.
- (g) Local petition.
- (h) Page.
- (i) Petition.
- (j) Sponsor.

#### **6-102. Applicability.**

- (a) Generally.
- (b) Not applicable to municipal petitions.
- (c) Title construed consistent with State Constitution.

#### **6-103. Regulations; guidelines; forms.**

- (a) Regulations.
- (b) Guidelines, instructions, and forms.

### **Subtitle 2. content and Process of Petitions.**

#### **6-201. Content of petitions.**

- (a) Generally.
- (b) Information page.
- (c) Signature page.
- (d) Petition relating to questions.
- (e) Signature page to meet requirements at all times.

#### **6-202. Advance determinations.**

- (a) Generally.
- (b) Advice of legal authority.

#### **6-203. Signers; information provided by signers.**

- (a) Generally.
- (b) Validation and counting.
- (c) Removal of signature.

#### **6-204. Circulators; affidavit of the circulator.**

- (a) Generally.
- (b) Requirements.
- (c) Age of circulator.

#### **6-205. Filing of petitions.**

- (a) Generally.
- (b) Regulations.

- (c) Acceptance of Petition.
  - (d) Additional signatures.
- 6-206. Determinations at time of filing.
  - (a) Review by chief election official.
  - (b) Determinations.
  - (c) Declaration of deficiency.
  - (d) Consistency with advance determination.
  - (e) Notice.
- 6-207. Verification of signatures.
  - (a) Generally.
  - (b) State Board to establish process.
  - (c) Random sample verification.
- 6-208. Certification.
  - (a) Generally.
  - (b) Certification.
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- 6-209. Judicial review.
  - (a) Generally.
  - (b) Declaration relief.
- 6-210. Schedule of process.
  - (a) Request for advance determination.
  - (b) Notice.
  - (c) Verification and counting.
  - (d) Certification.
  - (e) Judicial review.
- 6-211. Prohibited practices and penalties.

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- 7-101. Applicability.
- 7-102. Qualification of questions.
  - (a) Constitutional conventions and amendments.
  - (b) Act of the General Assembly.
  - (c) County charter; code home rule
  - (d) Creation of a new county or alteration of county boundaries.
  - (e) Questions referred by the General Assembly.
  - (f) County enactments.
  - (g) Incorporation of a new municipal corporation.
  - (h) Bond.
- 7-103. Certification of questions.
  - (a) Certification of local questions; time requirements.
  - (b) Certification by State Board.

7-104. Text of questions.

- (a) General guidelines.
- (b) Duty to prepare question.
- (c) Numbering or lettering.

7-105. Petitions relating to questions.

- (a) Charter board.
- (b) Filing.
- (c) Statement of contributions and expenditures.

7-106. Publication of questions.

- (a) Generally.
- (b) Publication.
- (c) Cost of publication.
- (d) Posting text; furnishing copies

## **Title 8. Elections**

### **Subtitle 1. Elections Generally.**

8-101. Conduct and uniformity of elections.

- (a) Conduct of elections.
- (b) Uniformity of elections.

8-102. Notice of elections.

- (a) Methods of notice.
- (b) Content of notice.
- (c) Specimen ballots.
- (d) Specimen ballot for general election in Prince George's County.
- (e) Mass media publication.
- (f) Special provision for Baltimore City.

8-103. Emergencies.

- (a) Declared state of emergency.
- (b) Other emergency circumstances.

### **Subtitle 2. Primary Elections.**

8-201. Date of the primary.

- (a) Generally.
- (b) Baltimore City municipal primary.

8-202. Political parties using the primary.

- (a) Generally.
- (b) Requirements for nominees.

8-203. Certification of candidates.

- (a) Generally.
- (b) Not applicable to special primary elections for Congress.

- 8-204. Unopposed candidates.
- 8-205. Write-in votes prohibited.

### **Subtitle 3. General Elections.**

- 8-301. Date of general election.
  - (a) Generally.
  - (b) Baltimore City municipal election.

### **Subtitle 4. Special Elections.**

- 8-401. Time of special elections.
  - (a) Generally.
  - (b) Time of special election.
  - (c) Time of special election - United States Senate.

### **Subtitle 5. Presidential Elections.**

- 8-501. Selection of convention delegates and alternate delegates.
  - (a) Process in accordance with party rules.
  - (b) Certification to State Board.
- 8-502. Candidates for President - primary election.
  - (a) Applicability.
  - (b) Procedure.
  - (c) Selection by Secretary of State.
  - (d) Petition process.
  - (e) Democratic primary - preference for "uncommitted".
  - (f) Certification of candidates.
- 8-503. Presidential electors - nomination.
  - (a) Nomination in accordance with party rules
  - (b) Number of nominees.
  - (c) Certification to the State Board.
- 8-504. Presidential electors - election.
  - (a) Generally.
  - (b) Names of electors not on ballot.
- 8-505. Presidential electors - meeting.
  - (a) Time and place.
  - (b) Vacancies.
  - (c) Voting by electors.

### **Subtitle 6. United States Senators.**

- 8-601. Year of elections.
- 8-602. Special election to fill vacancy.
  - (a) Appointed successor.

- (b) Special election.

#### **Subtitle 7. Representatives in Congress.**

- 8-701. Congressional districts - generally.
  - (a) State divided into districts.
  - (b) Boundaries and geographic references.
- 8-702. First congressional district.
- 8-703. Second congressional district.
- 8-704. Third congressional district.
- 8-705. Fourth congressional district.
- 8-706. Fifth congressional district.
- 8-707. Sixth congressional district.
- 8-708. Seventh congressional district.
- 8-709. Eighth congressional district.
- 8-710. Congressional vacancy - Governor's proclamation.
  - (a) Effect of vacancy.
  - (b) Governor's proclamation.
  - (c) Notice and delivery of proclamation.
  - (d) Special primary and regular primary combined.
- 8-711. Same - certification of candidates and nominees.
  - (a) Before special primary.
  - (b) Before special election.

#### **Subtitle 8. Boards of Education.**

- 8-801. Applicability.
- 8-802. Nonpartisan election.
  - (a) In general.
  - (b) Exception.
- 8-803. Qualification for candidacy.
  - (a) Qualification.
  - (b) Qualifying by petition prohibition.
- 8-804. Primary elections.
  - (a) Nomination.
  - (b) Candidate who dies or is disqualified before primary.
  - (c) Determination of nomination.
- 8-805. Vacancies in nomination.
  - (a) Nominee who dies, declines, or is disqualified.
  - (b) Votes cast for name remaining on ballot.
- 8-806. General election.
  - (a) Number of votes in contest.
  - (b) Election results.

## **Title 9. Voting**

### **Subtitle 1. Voting Systems.**

- 9-101. Use of certified system required.
  - (a) Generally.
  - (b) Limitation on number of voting systems used.
- 9-102. Certification of voting systems.
  - (a) Adoption of regulations.
  - (b) Periodic review.
  - (c) Standards for certification.
  - (d) Considerations for certification.
  - (e) Regulations for each voting system.
  - (f) Voting systems deemed certified.
- 9-103. Decertification.
  - (a) Decertification - generally.
  - (b) Time and conditions of decertification.
  - (c) Exception - adverse impact on the county.
  - (d) Exception - voting systems in existence before July 1, 1978.
- 9-104. Notice to local boards.
- 9-105. Acquisition of voting systems.
  - (a) Authority of local boards.
  - (b) Lease of voting machines to other entities.
- 9-106. Borrowing to purchase voting system.
  - (a) Authority to borrow funds.
  - (b) Issuance of bonds.
  - (c) Tax-exempt status of bonds.
- 9-107. Voting machine custodians.
  - (a) Appointment.
  - (b) Duties; training.

### **Subtitle 2. Ballots.**

- 9-201. Generally.
  - (a) Requirement of ballots in voting.
  - (b) Compliance with this subtitle.
  - (c) Other uses prohibited.
- 9-202. Responsibilities for preparation.
  - (a) State Board to certify ballots.
  - (b) Preparation by local boards.
- 9-203. Standards.
- 9-204. Uniformity.
  - (a) Generally.
  - (b) Exception - absentee ballots.
  - (c) Exception - primary elections



- 9-205. Content.
- 9-206. Arrangement - format.
  - (a) Heading.
  - (b) Exception.
- 9-207. Ballots - certification; display; printing.
  - (a) Time of certification.
  - (b) Exception - later date set by Court of Appeals.
  - (c) Delivery to local boards.
  - (d) Preparation of ballot; public display.
  - (e) Printing of ballots.
- 9-208. Late changes in ballots.
  - (a) Generally.
  - (b) Corrective actions.
  - (c) Notice of change in ballot.
- 9-209. Judicial review.
  - (a) Timing.
  - (b) Relief that may be granted.
  - (c) Errors discovered after printing.
- 9-210. Arrangement of ballots - candidates and offices.
  - (a) Offices - order of precedence
  - (b) Other offices.
  - (c) At-large candidates listed first.
  - (d) Instructions as to number of candidates to vote for.
  - (e) Names of candidates.
  - (f) Write-in votes.
  - (g) General elections - party designation.
  - (h) Residence of candidates.
  - (i) Election of resident delegates.
  - (j) Arrangement of political party.
  - (k) Arrangement of voting machine ballot - compactness.
- 9-211. Arrangement of ballots - questions.
  - (a) Order of questions.
  - (b) Questions certified by Secretary of State.
  - (c) Local questions.
  - (d) Numbering of questions.
- 9-212. Ballots with multiple ballot faces - instructions to voters.
- 9-213. Absentee ballots - contents.
- 9-214. Specimen ballots.
- 9-215. Printing.
  - (a) Standards.
  - (b) Number to be printed.
  - (c) Regulations adopted by State Board.
- 9-216. Ballot accountability.
  - (a) Accountability system required.
  - (b) Monitoring and review by State Board.

- 9-217. Prohibited practices.
  - (a) Generally.
  - (b) Penalties.

### **Subtitle 3. Absentee Voting.**

- 9-301. General provisions.
  - (a) Applicability.
  - (b) Forms.
- 9-302. Documentation by local boards.
- 9-303. Guidelines.
  - (a) Established by State Board.
  - (b) Content.
  - (c) Periodic assessment and revision of guidelines.
- 9-304. Qualification for absentee voting.
  - (a) Generally.
  - (b) Compliance with federal law.
- 9-305. Applications for absentee ballot.
  - (a) Application.
  - (b) Deadline for receipt of application.
  - (c) Late application.
- 9-306. Review of application; issuance or rejection.
  - (a) Review of application.
  - (b) Transmittal of ballot
  - (c) Rejection of application.
  - (d) Number of ballots issued to a voter.
- 9-307. Use of an agent in absentee ballot process.
  - (a) Use authorized.
  - (b) Qualifications of agent.
- 9-308. Assistance in marking ballot.
  - (a) Generally.
  - (b) Certification of assistance.
- 9-309. Instructions.
- 9-310. Envelopes.
  - (a) Required; prescribed by State Board.
  - (b) Optional procedures.
  - (c) Oath.
- 9-311. Additional compensation and expenses.
  - (a) Generally.
  - (b) Additional expenses.
  - (c) Payment to be the same as other appropriations.
- 9-312. Penalty for offenses relating to absentee voting.

## **Title 10. Polling Places**

### **Subtitle 1. Polling Place Sites**

#### **10-101. Generally**

- (a) Designation of polling places - generally.
- (b) Local provisions.

#### **10-102. Alternative polling places - elderly individuals and individuals with disabilities.**

- (a) Reassignment.
- (b) Procedure for reassignment.
- (c) Responsibility of local board.
- (d) Issuance of absentee ballot.

### **Subtitle 2. Election Judges.**

#### **10-201. In general.**

- (a) Number of election judges.
- (b) Political party affiliation.

#### **10-202. Qualifications for election judges.**

- (a) Residency.
- (b) Communication skills.
- (c) Political activity prohibited.
- (d) Adoption of guidelines.

#### **10-203. Appointment of election judges.**

- (a) Responsibility and time for appointment.
- (b) Chief judges.
- (c) Term.
- (d) Vacancy.

#### **10-204. Oath.**

- (a) Required.
- (b) Forms.

#### **10-205. Compensation of election judges.**

- (a) Generally.
- (b) Local provisions.

#### **10-206. Instruction for election judges.**

- (a) Responsibility of State Board.
- (b) Training materials.
- (c) Evaluation.
- (d) Contents of training program.
- (e) Responsibility of local board.
- (f) Training required.

#### **10-207. Removal of an election judge.**

- (a) Investigation of complaints.
- (b) Removal.

### **Subtitle 3. Polling Place Procedures**

- 10-301. Hours for voting.
  - (a) Hours - generally.
  - (b) Closing hour.
- 10-302. Delivery of equipment and supplies.
- 10-303. Authority and duties of election judges.
  - (a) Generally.
  - (b) Wearing badge of election day.
  - (c) Authority to keep order in the polling place.
  - (d) Protection of challengers and watchers.
- 10-304. Duties of police officers.
  - (a) Generally.
  - (b) Protection of challengers and watchers.
- 10-305. Vacancy in polling place staff during voting hours.
  - (a) Appointment of substitute election judge.
  - (b) Procedures.
- 10-306. Information for voters at polling place.
  - (a) Development of instructions.
  - (b) Preparation and posting of information.
- 10-307. Responsibilities of the local board.
  - (a) Generally.
  - (b) Assistance to polling place staff.
- 10-308. Access to voting room.
- 10-309. Responsibilities of election judges on election day - before the polls open.
  - (a) Generally.
  - (b) Admission of challengers and watchers.
- 10-310. Same - voting hours.
  - (a) Qualification of voters.
  - (b) Right to vote.
  - (c) Instruction of and assistance to voters.
- 10-311. Challengers and Watchers.
  - (a) Designation and removal of challengers and watchers.
  - (b) Rights of challengers and watchers.
  - (c) Certificate.
  - (d) Prohibited activities.
  - (e) Individuals other than accredited challengers or watchers.
- 10-312. Challenge of an individual's right to vote.
  - (a) Ground for challenge.
  - (b) Procedures for a challenge of the right to vote.
- 10-313. Write-in voting.
  - (a) Write-in voting permitted in certain elections.
  - (b) Responsibility of election judge.
- 10-314. Closing of the polls.
  - (a) Procedures.

- (b) Admission of watchers to hear election results.
- (c) Release of election judge from duty.
- 10-315. Time off for employees to vote.
  - (a) Generally.
  - (b) Paid leave.
  - (c) Proof of voting required.

## **Title 11. Canvassing**

### **Subtitle 1. Definitions**

- 11-101. Definitions.
  - (a) In general.
  - (b) Board of Canvassers.
  - (c) Canvass.
  - (d) Counting center.
  - (e) Removable data storage device.
  - (f) Unofficial returns.
  - (g) Vote tabulation or vote counting.
  - (h) Vote tallying.

### **Subtitle 2. Closing the Polls.**

- 11-201. Regulations.
- 11-202. Election judges - procedures for vote counting.
  - (a) In general.
  - (b) Specific duties.
  - (c) Observation of judges while performing their duties.

### **Subtitle 3. Vote Canvassing by Local Board.**

- 11-301. Organization of local boards of canvassers.
  - (a) In general.
  - (b) Election of officers.
  - (c) Oath required.
  - (d) Quorum required.
  - (e) Majority vote required for decision-making.
  - (f) Substitute members allowed.
  - (g) Representation from principal minority party required.
  - (h) The canvass.
- 11-302. Canvassing of absentee ballots.
  - (a) In general.
  - (b) Time for opening of absentee ballots.

- (c) Timely receipt required.
  - (d) Rejection of absentee ballots.
- 11-303. Rejected absentee ballot; appeal.
  - (a) Right of appeal.
  - (b) Time of filing.
  - (c) Procedures.
  - (d) Appeal to Court of Special Appeals.
- 11-304. Custody and security of documents and records related to the canvass.
- 11-305. Errors in canvass documents.
  - (a) In general.
  - (b) Correction of errors.
- 11-306. Verification of vote count.
  - (a) In general.
  - (b) Certification required upon completion of verification process.
  - (c) Dissent by a local board member - written statement required.

#### **Subtitle 4. Certification of Election Results by Local Board.**

- 11-401. Certified copies of results.
  - (a) Distribution of certified copies.
  - (b) Time for transmittal.
  - (c) Entry by clerk of the circuit court.
- 11-402. Release and publication of returns.
  - (a) Declaration of winners.
  - (b) Report of absentee voting.
  - (c) Copies of election results.
- 11-403. Security and inspection of voting system.
  - (a) In general.
  - (b) Opening of voting system - conditions.

#### **Subtitle 5. Statewide Canvass and Certification.**

- 11-501. State Board of Elections - canvass of primary election results.
  - (a) Duties.
  - (b) Dissent by a board member - written statement required.
- 11-502. Board of State Canvassers.
  - (a) Membership.
  - (b) Quorum.
  - (c) Executive Director of State Board serves as secretary.
  - (d) State Treasurer - appointment of deputy as designee.
- 11-503. Same - canvass of general election results.
  - (a) Duties.
  - (b) Dissent by a board member - written statement required.

**Subtitle 6. Certification of General Election Results and  
Issuance of Commissions of Election.**

- 11-601. Procedure.
  - (a) Certification by State Board.
  - (b) Notice to specified individuals.
- 11-602. Issuance of Commission by Governor.
- 11-603. Certificates for candidates elected to Congress constitute commissions.

**Title 12. Contested Elections**

**Subtitle 1. Recounts**

- 12-101. Petition for recount.
  - (a) Generally.
  - (b) Contents of petition for recount.
  - (c) Place of filing.
  - (d) Time of filing.
  - (e) Notice of filing of petition.
- 12-102. Counterpetition for recount.
  - (a) Generally.
  - (b) Contents of counterpetition.
  - (c) Place of filing.
  - (d) Time of filing.
  - (e) Notice of filing of counterpetition.
- 12-103. Recount on a question; petition.
  - (a) Generally.
  - (b) Contents of petition for recount.
  - (c) Place of filing.
  - (d) Time of filing.
  - (e) Notice of filing of petitions.
- 12-104. Same; counterpetition.
  - (a) Generally.
  - (b) Contents of counterpetition.
  - (c) Place of filing.
  - (d) Time of filing.
  - (e) Notice of filing of counterpetition.
- 12-105. Bond.
  - (a) Generally.
  - (b) Determination and setting of bond.
- 12-106. Duties of the State Board and local boards.
  - (a) Duties of local boards.
  - (b) State Board to monitor conduct of recount.

- (c) Termination of recount.
  - (d) Correction of returns.
- 12-107. Costs.
  - (a) Definition.
  - (b) Generally.
  - (c) Payment by county.

## **Subtitle 2. Judicial Review of Elections**

- 12-201. Scope of subtitle.
- 12-202. Judicial challenges.
  - (a) Generally.
  - (b) Place and time of filing.
- 12-203. Procedure.
  - (a) Generally.
  - (b) Expedited appeal.
- 12-204. Judgment.
  - (a) Generally.
  - (b) Act or omission that changed election outcome.
  - (c) Act or omission that may change outcome of pending election.
  - (d) Clear and convincing evidence.

## **Title 13. Campaign Finance.**

### **Subtitle 1. General Provisions.**

- 13-101. Application.
- 13-102. Summary of election laws.

### **Subtitle 2. Fundraising.**

- 13-201. Appointment of treasurer.
- 13-202. Requirements of committees.
- 13-203. Appointment and reports of subtreasurer.
- 13-204. Campaign depositories and petty cash fund.
- 13-205. Expenditures by treasurer.
- 13-206. Books, records, and receipts.
- 13-207. Personal contributions and loans.
- 13-208. Loans - generally.
- 13-209. Walk-around services.
- 13-210. Contributions - generally.
- 13-211. Employee contributions made by payroll deduction.
- 13-212. Limitations on contributions.



- 13-213. Limitations on transfers.
- 13-214. Exception to limitations.
- 13-215. Limitations on fundraising.

### **Subtitle 3. Local Provisions.**

- 13-301. Special provisions - Prince George's County.
- 13-302. Special provisions - Montgomery County.
- 13-303. Special provisions - Howard County.

### **Subtitle 4. Reporting Requirements.**

- 13-401. Generally.
- 13-402. Format and requirements of campaign finance reports.
- 13-403. Late filing fees.
- 13-404. Retention of documents.

### **Subtitle 5. Campaign Materials.**

- 13-501. Campaign materials - generally.
- 13-502. Sample copies of campaign materials.
- 13-503. Legislative newsletters.
- 13-504. Independent expenditures.

### **Subtitle 6. Prohibited Practices and Penalties.**

- 13-601. False statements.
- 13-602. Prohibited practices.
- 13-603. Criminal penalties.
- 13-604. Civil penalties.
- 13-605. Injunction.

## **Title 14. Disclosure by Persons Doing Public Business.**

- 14-101. Definitions.
- 14-102. Statement of contributions.
- 14-103. Contributions required to be included in statement.
- 14-104. Penalty; liberal construction of title; first report.

## **Title 15. Public Financing Act.**

- 15-101. Purpose.
- 15-102. Definitions.
- 15-103. Limitations on campaign expenditures.
- 15-104. Fair Campaign Financing Fund.
- 15-105. Public contribution - generally.
- 15-106. Same - limitations on expenditures; return or repayment.
- 15-107. Penalty for violation.
- 15-108. Disposition of remaining money.
- 15-109. Continued administration of Fund by Comptroller.
- 15-110. Short title.

## **Title 16. Offenses and Penalties.**

### **Subtitle 1. Voter Registration.**

- 16-101. Offenses relating to registration.
  - (a) Generally.
  - (b) Penalty.

### **Subtitle 2. Voting and Electoral Operations.**

- 16-201. Offenses relating to voting.
  - (a) Generally.
  - (b) Penalties.
- 16-202. Voting by person convicted of infamous crime.
  - (a) Generally.
  - (b) Penalties.
- 16-203. Disobeying lawful command of election official.
  - (a) Generally.
  - (b) Penalties.
- 16-204. Disturbing the peace.
  - (a) Generally.
  - (b) Penalties.
- 16-205. Interfering with election officials.
  - (a) Generally.
  - (b) Penalties.
- 16-206. Offenses as to ballots and balloting in general.
  - (a) Generally.
  - (b) Electioneering boundary.
  - (c) Penalties.

16-207. Use of alcoholic beverages at a polling place.

- (a) Definition.
- (b) Generally.
- (c) Penalties.

### **Subtitle 3. Conduct of Election Officials.**

16-301. Neglect of duties; corrupt or fraudulent acts.

- (a) Generally.
- (b) Penalties.

16-302. Tampering with election records.

- (a) Generally.
- (b) Penalties.

16-303. Operation of polling place.

- (a) Generally.
- (b) Penalties.

16-304. Adding or deleting votes.

- (a) By election judges.
- (b) By any person.
- (c) Penalties.

### **Subtitle 4. Petitions.**

16-401. Offenses relating to petitions.

- (a) Generally.
- (b) Each violation a separate offense.
- (c) Penalty.

### **Subtitle 5. Oaths.**

16-601. False oath or affirmation

- (a) Generally.
- (b) Subornation.
- (c) Penalty for perjury.
- (d) Penalty for subordination of perjury.

### **Subtitle 6. Canvassing.**

16-601. False reports.

- (a) Generally.
- (b) Penalties.

### **Subtitle 7. Election Records and Documents.**

16-701. Defacing or removing records.

- (a) Person with custody of records.
- (b) Person not in custody of records.
- (c) Exception.
- (d) Each violation a separate offense.
- (e) Penalties.

#### **Subtitle 8. Voting Equipment.**

- 16-801. Destruction of voting equipment.
  - (a) Generally.
  - (b) Penalties.
- 16-802. Tampering with voting equipment.
  - (a) Generally.
  - (b) Voting equipment key.
  - (c) Penalties.
- 16-803. Removal or destruction of equipment or supplies.
  - (a) Generally.
  - (b) Penalties.
- 16-804. Tampering with electronic voting system.
  - (a) Generally.
  - (b) Penalties.

#### **Subtitle 9. Other Offenses.**

- 16-901. Offenses relating to certificates of candidacy or nomination.
  - (a) Generally.
  - (b) Penalties.
- 16-902. Wagers on elections.
  - (a) Generally.
  - (b) Penalties.
  - (c) Disposition of money.

#### **Subtitle 10. General Penalty Provisions.**

- 16-1001. General penalty provisions.
  - (a) Misdemeanor for which no penalty is specified.
  - (b) Disqualification to be election official or employee.
  - (c) Disqualification of candidate found in violation.

## APPENDIX C

### SUMMARY OF SUBSTANTIVE CHANGES TO ARTICLE 33

#### Title 1: Definitions and General Provisions

- Definitions have been added, deleted, or amended to reflect changes in the revised article.
- A statement of purpose, expressing legislative intent, has been added. § 1-201
- Filing by Fax: Filing of any documents may be made by electronic facsimile transmittal unless the document is required to contain a signed affidavit. § 1-302.

#### Title 2: Powers and Duties of the State and Local Boards

- Name of the State Board: For purposes of clarity and uniformity with many other states, and to emphasize that the State Board's functions are beyond the purely administrative, the name of the State Administrative Board of Election Laws has been changed to the State Board of Elections. § 2-101(a)
- Removal of State Board Members: The Governor may remove a member of the State Board for incompetence, misconduct, or other good cause. This change makes the removal provisions of the State Board the same as those for local board members. § 2-101(c)

Present Code: No provision is made for removal of State Board members.

- Oath Requirement: Each appointee to the State Board is explicitly required to take an oath as required by the Maryland Constitution. § 2-101(d)

Present Code: No specific oath requirement in Article 33 for appointees of State Board.

- Composition of the State Board of Election: To provide continuity, the five members of State Board of Elections will be appointed to staggered four-year terms. Because the terms of two of the five members expire at the end of the Governor's term, majority of the Board can always be of the Governor's party. A member of the State Board may not serve more than three consecutive terms. § 2-101(e) & (f)

Present Code: The five members of the State Board served concurrent four-year terms for an unlimited number of terms.

- Powers and Duties of the State Board: The State Board's broadened authority is made clear: to manage and supervise elections in the State and ensure compliance with the requirements of this article and any applicable federal law. In addition, the State Board is specifically empowered and directed to "direct, support, monitor, and evaluate the activities of each local board;" adopt regulations to implement its powers and duties; receive and, in its discretion, audit campaign finance reports; appoint the Executive Director; and maximize the use of technology. § 2-102

Present Code: The State Board currently only has vague authority to “exercise supervision” over elections.

- The Executive Director, formerly the State Administrator of Election Laws, will be appointed by the State Board and serve at the State Board's pleasure. Not less than four of the five members of the State Board may remove the Executive Director for incompetence, misconduct, or other good cause. The Executive Director may appoint a Deputy Director who serves at the Executive Director's pleasure. § 2-103

Present Code: The State Administrator is appointed by the Governor for a term of six years. There is no provision for a Deputy Director.

- Intervention by the State Board in Judicial Proceeding: If a local board is a party to a judicial proceeding, the State Board shall be forwarded a copy of the proceeding and may join as a party to the proceeding. § 2-105

Present Code: There is no such requirement. This provision was added at the suggestion of the Office of the Attorney General.

- Removal of Local Board Member: A local board member may be removed for incompetence, misconduct, or other good cause. § 2-201

Present Code: Only “good cause” is specified.

- The term of a member of a local board will be four years. § 2-201(d)

Present Code: The present term for the members of the local boards is two years. The longer term was requested by local election officials.

- Local Election Director: The position of Election Director is formalized as a statutory public official with specific powers and duties. §§ 2-201(d) and 2-206

Present code: There is no formal recognition of the administrative head of a local board.

- The counsel to the local board must be a registered voter in the respective county. § 2-205

Present Code: No present requirement for registration.

- Bar to Political Activities: The bar on political activity is extended to the counsel to each local board (except Baltimore City, where the Attorney General serves as counsel to the local board). For election judges, the bar applies only while they are performing official duties on election day. § 2-301

Present Code: Election judges are presently prevented from acting as a campaign manager for a candidate or treasurer for a candidate or political committee.

- Hours and Days Local Boards Open: Each local board is required to be open to the public on each day the county government offices are open. § 2-302

Present Code: The code now provides that minimum hours of business vary by number of registered voters in the county, but in practice even the smaller jurisdictions are open five days a week.

- Delegable and Nondelegable Functions of the Local Board: Specified duties of the local board may be delegated to the Election Director. Throughout the article, administrative duties are assigned to the Election Director § 2-206

Present Code: The code now assigns all duties to the three-member local board and makes no mention of the position of Election Director or Election Administrator. The current system is unworkable; on many occasions, the activity of the election preparation would come to a halt if the three board members had to personally perform the administrative functions.

### **Title 3: Voter Registration**

- Voter Registration Applications: Statewide voter registration application may not require notarization or additional information not necessary to determine eligibility. § 3-202

Present Code: This provision reflects current policy and regulations.

- Forward Voter Registration Applications: The Motor Vehicle Administration and other agencies designated under the Nation Voter Registration Act are required to forward to the State Board a completed voter registration application within 5 days of receiving the application. § 3-203(D)

Present Code: The MVA and other NVRA agencies currently have up to 10 days to forward the completed voter registration applications to SABEL.

- Reopening of Voter Registration After Elections: The close of voter registration for a general or special election ends after the 11th day following the election. § 3-302(a)

Present Code: For a general or special election, voter registration is closed through the 16th day following the election. The change from the 16th to the 11th makes the re-opening consistent with primary and special primary elections.

- Custody of Voter Registry: Detailed specifications are eliminated and replaced by broad directive to local boards to maintain registration and create precinct registers consistent with regulations adopted by State Board. § 3-501

Present Code: Specific requirements set out the manner in which records should be kept.

- Copy of Voter Registration List: A voter registration list may not be used for commercial solicitation or any purpose not related to the electoral process. § 3-507.

Present Code: This clarifies the current law, which does not appear to allow the use of the lists for election-related business purposes such as polling.

### **Title 4: Political Parties**

- Codification of Supreme Court Rulings on Party Governance: If statutory provisions relating to party governance conflict with a party's constitution and by-laws, the constitution and by-laws prevail

unless the statutory requirement is based on a compelling state interest. § 4-101

Present Code: There is no current provision addressing conflict. This provision addresses the Supreme Court decision of *Eu v. San Francisco County Democratic Central Committee*.

- Retaining Status as a Political Party: To retain its status as a recognized party, a party must run a candidate for the highest office on the statewide ballot (President or Governor), and that candidate must receive at least 3% of the vote cast for that office. § 4-103

Present Code: A political party must receive at least 3% of the total vote cast for all the statewide candidates in each election.

- Composition of State Central Committees: The composition of the state central committee of a political party is left to party rules. § 4-201

Present Code: The current law requires that the state central committee be composed of members of the local central committees.

## **Title 5: Candidates**

- Use of Nicknames: The use of nicknames on the ballot will be permitted, subject to specified requirements and standards. § 5-301

Present Code: Nicknames on the ballot are currently prohibited.

- Filing Fees: Filing fees are eliminated for all presidential and vice-presidential candidates and county offices that pay a salary of \$300 or less are eliminated. (The latter category is obsolete.) § 5-401

Present Code: Currently only presidential candidates nominated by petition pay the filing fee. Candidates designated by the Secretary of State pay no fee.

- Vacancy before Primary Election: The name of a candidate will not be removed from the ballot because of death or disqualification unless the vacancy is known at least 10 days before the filing deadline. § 5-504.

Present Code: Current law specifies this deadline as the 7th day prior to the filing deadline.

- Nomination by Petition: In year in which President is elected, a declaration of intent to seek nomination by petition must be filed by July 1. § 5-703(c)

Present Code: A declaration of intent is required of a petition candidate only when the election of the President is not on the ballot.

- Nomination by Petition - Signature Requirement: For statewide offices, the petition must contain signatures that equal not less than 1% of the total number of registered voters who are eligible to vote in the State. (The 3% requirement for local offices is retained.) § 5-703(D)

Present Code: All petitions (both statewide and non-statewide) must have signatures not less than 3% of the total number of registered voters eligible to vote for that office.



- Filing of Declination of Nomination: In a gubernatorial election and the Baltimore City municipal elections, a certificate of declination must be filed within 2 days after the results of the primary election are certified. § 5-801

Present Code: A certificate of declination must be filed within 10 days after primary election (when final results may not yet be known).

- Filling Vacancy in Local Offices and Districts Entirely Within One County: A vacancy in nomination shall be filled by the later of the 40th day before the general election or the 5th day following the creation of the vacancy. § 5-1004

Present Code: A vacancy must be filled at least 30 days before the general election.

- Vacancy in Governor/Lt. Governor After Primary Election: Governor/Lt. Governor unit remains on the ballot for the general election if a vacancy in the Governor position occurs less than 15 days before the general election and no replacement candidates are designated and qualified by the 10th day before the election. § 5-1005

Present Code: Unit stays on the ballot if a vacancy is created less than 20 days before general election.

- Vacancy in Petition Candidates for Governor/Lt. Governor After Filing Deadline: Governor/Lt. Governor unit remains on ballot for the general election if a vacancy in the Governor position is created less than 15 days before the general election. § 5-1101

Present Code: Unit stays on ballot if a vacancy is created is less than 20 days before general election.

## **Title 6: Petitions**

- State Board will adopt regulations to carry out provisions relating to petitions, including the form and content of petitions, procedures for circulation of petitions, and verification and counting of signatures. § 6-103

Present Code: Many of the details of the petition format and process are contained in statute.

- Advance Determinations: In advance of the petition filing deadline, the petition sponsor may submit to the appropriate election official the petition form for a determination of its sufficiency as to format. In making the determination, the election official may consult with the legal authority. § 6-202

Present Code: There is no provision in the current code concerning advance determinations.

- Removal of signatures: Signatures may be removed from the petition either by the signer if application is received by election authority prior to the submission of the signature or by the circulator if the signature does not satisfy legal requirements. § 6-203.

Present Code: No provision in current code.

- Filing of Petitions: If the State Constitution provides that a petition be filed with either the Secretary

of State or an official or governmental body of the county, the Secretary of State or county entity will forward the petition to the appropriate election official within 24 hours of receipt. § 6-205

Present Code: A petition filed under Maryland Constitution must be filed with Secretary of State, but there is no time frame within which petition must be forwarded. There is no current provision for forwarding local petitions to the appropriate board.

- Verification of a Random Sample of Signatures: The State Board shall adopt regulations for the process of verifying petition signatures. If approved by the State Board, verification may be limited to a random sample of the total number of signatures submitted. § 6-207

Present Code: No current provision allows for the use of random sample verification

#### **Title 7: Questions**

- Certification of Local Questions: If the local certifying authority fails to certify a question to the local board by the deadline, the clerk of court for the county shall make the certification. § 7-103

Present Code: This provision currently applies only to Howard County..

#### **Title 8: Elections**

- Emergency situation: Provision is made to address the potential problem of a wide range of "emergencies." It is consistent with the Attorney General's guidelines for emergency situations and with provisions relating the Governor's emergency powers, which are found primarily in Article 16A of the Code. § 8-103

Present Code: There is no provision addressing emergency situations.

- Selection of Delegates to Conventions: The revision eliminates the specific selection process for delegates to the Democratic and Republican national conventions. The parties are required to submit to the State Board information pertaining to the selection of delegates or alternative delegates. § 8-501(b)

Present Code: The procedures by which the delegates are selected are currently specified in statute and must be changed whenever party rules change, because party rule prevails over statute in this area.

- Vacancy in the Office of United States Senator: The individual appointed by the Governor to fill a vacancy will serve the remainder of the term if the vacancy occurs after the date that is 21 days before the deadline for filing certificates of candidacy for the election held in the fourth year of the term. In this case, a special election would not be held. If the vacancy occurs before the 21 days before the filing deadline for the congressional election in the second or fourth year of the senatorial term, the Governor issues a proclamation declaring that a special primary and special general elections be held concurrent with the next regular statewide primary and general elections. A vacancy occurring within 21 days before the filing deadline in the second year of the term, the special election would take place in the fourth year of the term. § 8-602

Present Code: The current law does not address the issue of a cutoff date after which the appointee

serves for the remainder of the term.

- Vacancy in the Office of the U.S. House of Representatives: If a vacancy occurs during the period beginning 120 days before the regular primary election and ending 40 days before the regular primary election, the special primary election will be merged with the regular primary election. Candidates filing certificates of candidacy for regular primary election will be deemed to have filed certificates for special primary election. The winner will be the nominee in both the special general election and the subsequent regular general election. § 8-710

Present Code: No provision addresses this situation. When the situation arose in the Seventh Congressional District in 1996, a special law was enacted for that election.

## **Title 9: Voting**

- Certification of Voting Systems: A voting system may not be certified by the State Board unless it has been examined by an independent testing laboratory that is approved by the National Association of State Election Directors and been shown by the testing laboratory to meet the performance and test standards for electronic voting systems established by the FEC. § 9-102(c)(2)

Present Code: There is no current provision on this subject.

- Considerations for Certification: A voting system's accessibility for disabled voters is a consideration when determining whether a voting system should be certified. § 9-102(D).

Present Code: No such provision exists in current law.

- Regulations for Certified Voting Systems: Provisions relating to paper ballots, mechanical requirements of machines, preparation of machines by custodians, and delivery and operation of machines and equipments have been eliminated from the Code. These are primarily procedural and are either obsolete or will be included in regulations. Paper ballots and lever voting machines are grandfathered as certified systems.
- Certification of Ballots: State Board will certify the content and arrangement of each ballot at least 50 days before a primary election. For the general election, certification shall be at least 55 days before a general election in a presidential election year and not more than 18 days after the primary election in any other year. For special elections, the certification occurs at least 18 days before special primary election and for a special general election, not later than the date specified in the Governor's proclamation. § 9-207(a).

Present Code: Current law states that certification occurs not later than 31 days before a primary or general election.

- Delivery of Certified Ballot to Local Boards: The State Board shall deliver the content and arrangement of the ballot to the local boards within 48 hours of certification. § 9-207(c).

Present Code: State Board delivers within 4 days.

- Timing of Judicial Review of Ballot: A registered voter may seek judicial review of content and arrangement of ballot within three days after the ballot is placed on public display. § 9-209.

Present Code: Judicial review may be sought within two days of the expiration of the three-day display period.

- Party Designation on Ballot: A candidate who is not a nominee of a recognized political party is designated on the ballot under the heading of "other" or "other candidates". Designation of "independent" is eliminated. The party name must be expressed in one word is eliminated. § 9-210
- Number of Ballots to be Printed: The local board shall print the number of ballots equaling the percentage of voters in the county who voted in the corresponding election that was 4 years prior, plus 10%, multiplied by the current number of registered voters in the county. § 9-215

Present Code: Current law requires printing ballots equal in number to 110% of the number of registered voters.

- Records of Absentee Voting: Each local board is required to keep information on the absentee ballot application, appropriate ballot style, date of issuance of ballot, address to which ballot was mailed, and date and time absentee ballot received. § 9-302

Present Code: Only requires the record to show the date and time an application received and names and addresses of applicants.

- Guidelines for the Administration of Absentee Voting: The State Board is authorized to adopt guidelines for the administration of absentee voting by local boards. Guidelines will provide for late applications for absentee ballots, ballot security, determining timeliness of applications and ballots, canvas processes, and other issues relating to the absentee voting process. § 9-303.

Present Code: These issues are incompletely addressed in the present code.

- Review of Absentee Ballot Application: Upon receipt of an absentee ballot application, the Election Director reviews the application. The local board's authority to determine whether the applicant is eligible to vote by absentee ballot may be delegated to the staff of the local board. If the function has been delegated to the staff of the local board, an applicant whose application was rejected may appeal to the three-member local board. § 9-306

Present Code: Theoretically, the local board (not the administrative staff) reviews of the absentee ballot applications, and the authority to reject an application is not delegable.

- Use of Agent in Absentee Voting Process: An authorized agent may be used at any time to hand deliver an absentee ballot application and the voted ballot. The agent must be at least 18 years old and may not be a candidate for office on the ballot. §9-307

Present Code: Presently, an authorized agent can only be used in the last two weeks before the election. The restriction as to candidates on the ballot is not presently in the Code.

- Envelopes for Absentee Ballots: The revised law gives the local board the option of using either two or three envelopes in the absentee ballot packet.

Present Code: The current law requires three envelopes be used with the absentee ballot.

## **Title 10: Polling Places**

- **Election Judges:** In a precinct of fewer than 200 registered voters, the local board may staff the precinct's polling place with two election judges. § 10-201

Present Code: All precincts must have at least 4 election judges. There are an increasing number of very small precincts.

- **Use of Minor Party and No-party Registrants as Election Judges:** Minor party registrants (in addition to no-party registrants) may be appointed as election judges if there are at least eight judges for the precinct. The local board need not make a prior effort to use only Democrats or Republicans before appointing a judge who is registered with a minor party or without party affiliation. § 10-201

Present Code: Only those registered without party affiliation may be appointed as judges

- **Political Activities of Election Judges:** An election judge may not engage in partisan or political activity while on duty in the polling place. § 10-202

Present Code: No such provision currently exists.

- **Appointment of Election Judges:** The Election Director, with the approval of the local board, appoints election judges. § 10-203

Present Code: The local board appoints judges, and each board member has power to veto any proposed appointment.

- **Oaths for Election Judges:** The oath and commission of office for an election judge are one document; the signed oath, returned to the board, constitutes the commission. § 10-204.

Present Code: These are separate documents.

- **Instructions for Election Judges:** The State Board is required to develop a program of instructions for election judges and oversee the implementation of the program. § 10-206

Present Code: Training of judges is left to the local board.

- **Polling Place Procedures:** Detailed procedures for election judges will be in an instruction manual developed by the State Board. (Details as to procedures are deleted from the current law, being either obsolete or covered by regulation.) All judges are required to be identified by a badge. § 10-303

Present Code: Only Baltimore City election judges are currently required to wear election badges.

- **Voter Information at Polling Places:** The State Board shall produce information materials to be posted at the polling places, and before the polls open, the election judges will post the appropriate specimen ballot, instructions concerning assistance, and other information. § 10-305

Present Code: No such provisions currently exist.

- Support from Local Board on Election Day: Local board members must be "available as needed" on election day. The local board must provide staff to each polling place with means to contact and obtain support from the local board's office on election day. § 10-306

Present Code: No such provisions exist in current law.

- Access to Voting Room: The statute lists the classes of individuals who have access to the voting room in the polling place. § 10-307

Present Code: No such provision exists in the current law.

- Challengers and Watchers: Watchers may not attempt to ascertain how the voter voted or intends to vote, converse in the polling place with any voter, or assist in voting. All restrictions on the actions of an accredited challenger or watcher apply to a non-accredited challenger or watcher. § 10-310

Present Code: The prohibitions presently only apply to challengers. The second comment presently only applies to accredited challengers and watchers.

- Challenging Right to Vote: If a person wishing to vote is denied right to vote as a result of a challenge, the person has the right to appeal the decision to the local board. § 10-311

Present Code: The person does not presently have the explicit right to appeal.

- Procedures for Closing of Polls: The local board shall provide detailed procedures for the closing of the polls. § 10-313

Present Code: Current law describes in detail the procedures to be followed, much of which is obsolete.

## **Title 11: Canvassing**

- Regulations for Canvassing: The State Board shall adopt regulations governing the canvass of the votes. § 11-201

Present Code: There is no similar provision in the current code.

- Closing Polls: The Election Director will issue directions to be followed by the election judges for the closing of the polls and for performing tasks required in post-closing record.

Present Code: The process by which polls are closed is specified in detail in the present code, and much of it is obsolete.

- Local Board of Canvassers: The board of canvassers is required to convene on or before 5:00 p.m. on election day at the designated counting center. Additionally, the State Board will adopt regulations to ensure the integrity of electoral process and accuracy of the vote tabulation for each local board of canvassers to follow. § 11-301

Present Code: Local board of canvassers are currently required to meet on or before the second day following a primary or general election and on the first day following a special primary or special

general election.

- **Canvassing of Absentee Ballots:** The local board may not open any absentee ballot envelope prior to 8:00 a.m. on the Wednesday following election day. Additionally, if the local board receives more than one absentee ballot from the same person, the ballot to be counted is the ballot with the latest properly signed oath. § 11-302

Present Code: The local board may not open any absentee ballot envelope prior to 10:00 a.m. on the Wednesday following the election day. Currently, if more than one ballot is received from the same person, the ballot with the first executed oath is the one to be counted.

- **Board of Canvassers - Correcting Record:** A board of canvassers has the authority to correct a document or record only in accordance with regulations adopted by the State Board. § 11-305

Present Code: A board of canvassers, upon finding mistake, issues a subpoena to the election officials who prepared and certified the returns. These provisions are obsolete and do not reflect the procedures now in use.

## **Title 12: Contested Elections**

- **Petition for Recount:** A petition for a recount shall be filed with the same election authority with which the candidate's certificate of candidacy was filed and be filed within 3 days after the results of the election have been certified. § 12-101.

Present Code: For a candidate on the ballot in multiple counties, the candidate files the petition with either the State Board or separately with each applicable local board. The petition must be filed within 10 days after the election or within 2 days after the results are declared official.

- **Recount on a Question:** The revision provides for a recount on the certified results of a question (§§ 12-103 and 12-104).

Present Code: There is no current provision for a recount on a question.

- **Affidavit of Fraud, Mistake or Error Eliminated:** An affidavit alleging fraud, mistake, or error is no longer required to be filed with the petition for a recount.
- **Recounting Procedure:** The State Board will monitor and support the work of local boards conducting a recount to ensure compliance. The petitioner may request that a recount be stopped upon reviewing the early results. §12-106

Present Code: No such provisions in current law.

- **Judicial Review of Elections:** A registered voter may seek judicial relief, if no other timely or adequate remedy is available, within the earlier of 10 days after the act or omission (or date the act or omission became known to the petitioner) or 7 days after election results are certified or, as to a gubernatorial primary or special primary election, 3 days after certification. § 12-202

Present Code: Currently, a person seeking judicial relief must do so within the earlier of 20 days after the date of act or omission (or the date the act or omission is known) or date the results are certified.

### **Title 13: Campaign Finance**

- The only change made to this title relates to campaign materials: (1) to include material transmitted by or appearing on an electronic medium, such as the Internet; and (2) to provide that the sample copy of the materials may be either on paper or electronic medium.

### **Title 14: Disclosure by Persons Doing Public Business**

- No substantive changes made to Title 14.

### **Title 15: Public Financing Act**

- No change made in the provisions of the title. The name of title is changed (from the current "Fair Campaign Financing Act") for ease of reference and public understanding.

### **Title 16: Offenses and Penalties**

- Showing Ballot to Another: The provision prohibiting a person from allowing his ballot to be seen by another has been repealed. § 16-206
- Tampering with Election Records: An individual may not fraudulently tamper with election records of any kind. § 16-302.

Present Code: This section presently applies only to election judges.

- Distributing List of Persons: The prohibition on distributing a list of persons who have or have not voted has been deleted. § 16-303.
- General Penalty Provisions: A person who is convicted of any criminal violation shall be permanently disqualified from serving as election judge, board member, or employee of a board. A candidate convicted of a prohibited practice is ineligible to be elected or appointed to any public office or employment for 5 years following the date of the election. § 16-1001

Present Code: Presently, the restrictions as to both are for 4 years.

- Tampering with an Electronic Voting System: A new felony offense is created, in recognition that computer tampering could corrupt an entire election. A suitably severe penalty is provided for violation. § 16-804.

Present Code: No such provision in current law.

- Miscellaneous Repealed Sections: The following provisions of the current law will be repealed: § 24-5, which provides a criminal penalty for election judges who are late arriving at the polls or leave without authorization; § 24-6, which deals with the now-obsolete boards of registry; § 24-28, which states that irregularities in conducting registration or elections do not constitute a defense to prosecution (the Commission could not see a need to state this); § 24-29, which says that criminal penalties relating to elections apply to voting on questions (there is nothing in the law that implies otherwise); and § 24-31, which provides 20 preemptory challenges for trials of election offenses (the same number as capital murder trials).



## APPENDIX D

### SEPARATE BILLS PROPOSED BY THE COMMISSION

#### 1. Deadline for voter registration cutoff.

Art. 33, § 3-8(a), revised § 3-302

**Current:** The deadline for voter registration applications is the 5th Monday preceding an election.

**Proposal:** Change the deadline to 24 days prior to the election by the 2000 elections, and to 21 days by 2002 elections.

#### 2. Repeal of filing fees.

Art. 33, § 4A-6, revised § 5-401

**Current:** Filing fees are specified for each candidate, including Presidential and Vice Presidential candidates. In the revised code, the Commission has removed all filing fees for President and Vice President.

**Proposal:** Remove all filing fees for all other candidates.

#### 3. Provisions relating to new/minor parties.

See attached description.

#### 4. Constitutional provisions relating to publication of notice.

Art. XIV, § 1 of the Maryland Constitution (which is cross-references in Art. XVI, § 5)

**Current:** Publication of a proposed constitutional amendment must be in at least two newspapers in each county and in at least three newspapers in Baltimore City.

**Proposal:** Amend the Maryland Constitution, changing the specific publication requirement to a general requirement to provide for public notice by an effective means of dissemination.

#### 5. Late vacancy for office of Governor.

Art. 33, § 6-6, revised § 5-1004.

**Current:** If there is a late vacancy in office, the candidate's name remains on the ballot. If that candidate wins, the Lt. Governor candidate succeeds to the office of Governor.

**Proposal:** Provide that in the case of a late vacancy in a gubernatorial election, the Lt. Governor candidate officially becomes the gubernatorial candidate, even though it is too late to change the ballot.

**6. County of residence of candidate in statewide or multi-county contest.**

Art. 33, § 16-5(d), revised § 9-210(h)

**Current:** The county of residence is listed on the ballot for each candidate for statewide or multi-county office.

**Proposal:** Eliminate the practice of listing the county of residence of statewide or multi-county candidates.

**7. Registrants to provide last four digits of Social Security number.**

Art. 33, § 3-1, revised § 3-202

**Current:** Applicants for voter registration only need to provide their name, date of birth, and address.

**Proposal:** Require that applicants also provide the last four digits of their Social Security number.

**8. Waiver of recount cost if margin is 1/10 of 1%.**

Art. 33, § 130-2, revised as § 12-105

**Current:** Petitioners (and counterpetitioners) must pay for the cost of a recount, unless the recount changes the outcome of the election or the petitioner gains an additional 2% of the vote cast in the contest.

**Proposal:** If the margin is within one-tenth of one percent or less of the vote cast in the contest, the cost will be waived.

## **Proposed Changes Affecting Non-Primary Parties and Non-Party Candidates**

### **1. Establishment of New Party.**

#### **The main bill**

Left unchanged in the main bill is the current law's requirement that a party submit 10,000 signatures to receive initial recognition as a political party.

#### **The separate bill**

A partisan organization submits a petition signed by at least 1% (approximately 25,000) of the State's registered voters, collected over a period of no more than 2 years, in order to become a recognized political party.

### **2. Continued Recognition of Political Parties**

#### **The main bill**

A party continues as a recognized party by running a candidate for the highest office on the statewide ballot (President or Governor) and receiving at least 3% of the total vote for that office.

#### **The separate bill**

The party would continue as a recognized political party through the next two statewide general elections, regardless of the election results or the party's voter registration figures. At the conclusion of the second general election following recognition, the party could continue to be a recognized political party only if:

- The party's candidate for the highest office on the ballot (President or Governor) received at least 1% of the total vote for that office; or

- The most current voter registration totals showed that at least 1% of the State's registered voters were affiliated with that party. The determination would be made on the December 31 following the election (there being a "grace period" between the official results of the election and December 31).

Recognition could continue under either of these criteria indefinitely. To continue for a succession of 2-year periods on the basis of electoral results, the party would have to run candidates for President and Governor in each election and receive at least the 1% vote each time. Failing that standard in any election would require continued recognition on the basis of voter registration *in each year*, as of December 31; if the party thereafter received 1% of the vote for Governor or President, recognition would be extended for another 2 years.

### **3. Non-primary nomination procedures**

#### **The main bill**

The petition requirements for nomination to a *statewide* office will be reduced from 3% of the registered voters of the State to 1%. Local offices will stay at 3% of the registered voters eligible to vote for the office. (Unchanged in all scenarios is the provision that a recognized, non-primary party can designate its presidential and vice presidential candidates with no petition requirement.)

#### **The separate bill**

*Petition:* The candidate of a political party whose members constitute less than 1% of the State's registered voters must gather the signatures of at least 1%, but not less than 250, of the registered voters eligible to vote for the office (statewide *and* local).

*Convention:* A political party that has at least 1%, but less than 10%, of the State's registered voters may use a party convention to nominate a candidate for any public office. If they do not use a convention, the petition requirements will apply.

## APPENDIX E

### MEETINGS OF THE COMMISSION

| <u>Meeting Date</u> | <u>Meeting Subject</u>   |
|---------------------|--|
| September 4, 1996   | The meeting generally focused on organizing the work of the Commission and establishing a framework for revising the Election Code   |
| September 18, 1996  | The structure and governance of elections was discussed, with a specific focus on members, employees, the Administrator, and the duties of the State Administrative Board of Election Laws as well as similar issues facing local boards of election. The Commission decided to change the name of the State Administrator of Election Laws to Executive Director. In addition, the Commission proposed that the Executive Director should be appointed by the Board, instead of the Governor. |
| October 2, 1996     | Public Testimony (see Speakers list, Appendix F)   |
| October 16, 1996    | Review of the staff draft of "Title 2. Powers and Duties of the State and Local Boards.". The Commission decided that special provisions for individual counties should be retained throughout the Election Code.  |
| October 30, 1996    | The Commission discussed an outline of issues relating to voter registration distributed by the Chairman.  |
| November 8, 1996    | The Commission heard testimony from invited professors and the general public on the topic of political parties and ballot access (see Speakers list, Appendix F).   |
| November 27, 1996   | Representatives from the U.S. Postal Services (USPS) spoke about ways the USPS can serve the needs of state and local governments with regard to voter registration list maintenance. The Commission followed the USPS presentation with a work session dealing with remaining voter registration topics.  |
| December 11, 1996   | The Commission reviewed "Title 3. Voter Registration".   |
| January 2, 1997     | The Commission discussed the law relating to political parties and the nomination process. Specifically, there was extensive discussion of the various petition requirements imposed on "third" parties and their candidates.  |

| <u>Meeting Date</u> | <u>Meeting Subject</u>  |
|---------------------|---|
| January 15, 1997    | Commission members Ronald Hickernell and Secretary Willis reported their recommendations for changes in the law relating to ballot access and recognition of political parties. The Commission then reviewed an outline disturbed by the Chairman on nominations.   |
| February 12, 1997   | Carole Evans and Robert Antonetti, directors of local election boards, discussed the responses of the Legislative Committee of the Maryland Association of Election Officials to the revised titles on registration and on State and local boards.  |
| March 12, 1997      | Testimony from election officials relating primarily to the issue of a later close of registration.   |
| May 7, 1997         | Presentation by Peter Francia, doctoral candidate in Political Science at the University of Maryland on the effect of voter registration deadlines on voter turnout. The Commission then reviewed "Title 6. Petitions".   |
| May 22, 1997        | The Commission reviewed the redraft of "Title 6. Petitions". The Commission then began its review of "Title 4. Political Parties".  |
| May 28, 1997        | The issue of whether to shorten the period of closed registration before each election was discussed at length. The Commission adopted, with modifications, the proposal by Mr. Hickernell and Secretary Willis dealing with the qualification of new parties. The Commission discussed party governance and the need for language specifying the supremacy of party rules. The Commission reviewed and approved the draft of "Title 7. Questions". |
| June 11, 1997       | The Commission reviewed the draft of "Title 5. Candidates".   |
| June 18, 1997       | The Commission continued its review of "Title 5. Candidates".   |
| June 26, 1997       | The Commission discussed whether financial reports for petitions should be consolidated with the general campaign finance provisions. The Commission approved a Constitutional Amendment to remove the specific requirements for newspaper publication. The Commission then concluded its review of "Title 5. Candidates" and began its review of "Title 8. Elections".   |

| <u>Meeting Date</u> | <u>Meeting Subject</u>   |
|---------------------|--|
| July 9, 1997        | The Commission concluded its discussion of "Title 8. Elections" and reviewed the first subtitle of "Title 9. Voting".  |
| July 27, 1997       | The Commission reviewed the draft of the second and third subtitles of "Title 9. Voting".  |
| August 6, 1997      | The Commission reviewed the list of delegable and nondelegable duties of the local boards developed by the Attorney General's Office. The Commission concluded its review of Title 9, Subtitle 3 - Absentee Voting.  |
| August 13, 1997     | The Commission considered a revised list of delegable and nondelegable duties and made decisions on which duties should or should not be delegable by the local boards. The Commission then reviewed the draft of "Title 10. Polling Places".  |
| September 3, 1997   | The Commission reviewed the draft of "Title 11. Canvassing".   |
| September 22, 1997  | The Commission reviewed the draft of "Title 12. Contested Elections".  |
| October 6, 1997     | The Commission reviewed the draft revision of "Title 16. Offenses and Penalties". In addition, the Commission approved "Title 13. Fair Campaign Practices", "Title 14. Disclosure by Persons Doing Public Business" and "Title 15. Public Financing Act". These titles are generally unchanged from current law except for renumbering and restructuring, the inclusion of references to campaign ads on the Internet, and changing the title of Title 15 for clarity. |
| October 15, 1997    | The Commission conducted a final review of the first eight revised titles. The Commission also considered issues raised by the drafters, as well as by Barbara Feaga and Carol Evans, directors of local boards.   |
| October 29, 1997    | The Commission concluded its final review of the remaining revised titles of the Code.   |
| November 12, 1997   | The Commission conducted a public hearing (see Speakers list, Appendix F).   |

*Meetings of the Commission*  
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| <u>Meeting Date</u> | <u>Meeting Subject</u>  |
|---------------------|---|
| November 20, 1997   | The Commission discussed issues raised at the public hearing. |
| January 7, 1998     | Final approval of the bills and the Report.                   |



## APPENDIX F

### INDIVIDUALS WHO TESTIFIED BEFORE THE COMMISSION (Including Informal Remarks from Audience Members)

| <u>Meeting Date</u> | <u>Speakers</u>  |
|---------------------|--|
| September 18, 1996  | Robert Antonetti, Director of the Prince George's County Board, informed the Commission that the Maryland Association of Election Officials is in the process of formulating recommendations for the Commission.   |
| October 2, 1996     | <p>Helen Koss, Chairman of the State Administrative Board of Election Laws (SABEL), testified about SABEL's need for an integrated registration system.</p> <p>Joyce Terhes, Chairman of the Maryland Republican Party testified about registration and purge procedures required by the National Voter Registration Act.</p> <p>Richard Parsons, Executive Director of the Maryland Democratic Party also testified about registration and improvements he identified to enhance the system.</p> <p>Jesse Markowitz, of the Libertarian Party testified about the law's treatment of "nonprimary parties".</p> <p>Joan Paik of the League of Women Voters informed the Commission that the League is carrying out a study of Maryland's election laws.</p> <p>Deborah Povich of Common Cause testified in favor of a shorter voter registration cut-off period and about general issues of voter turnout.</p> <p>Curtis Gans of the Committee to Study the American Electorate also testified before the committee. Please see the review of his testimony included in this report.</p> |
| November 8, 1996    | <p>Jamin Raskin, Professor of Law at the Washington College of Law, testified on behalf of Marylanders for Democracy regarding the need for greater ballot access.</p> <p>Paul Hernson and James Gimpel, Professors of Government and Politics at the University of Maryland, both spoke in favor of Maryland's current level of ballot access and questioned the efficacy of increased access.</p>  |

*Individuals Who Testified Before the Commission*  
*Page 2*

| <u>Meeting Date</u>             | <u>Speakers</u>  |
|---------------------------------|--|
| November 8, 1996<br>(continued) | <p>Joyce Terhes of the Republican Party of Maryland testified regarding Republican Party's position on ballot access issues.</p> <p>Joe Miller of the Libertarian Party testified about his party's position regarding the need for increased ballot access.</p> <p>Barbara Robson, on behalf of the Natural Law Party, testified about the difficulty of collecting petition signatures.</p> <p>Allan Lichtman, Professor of American History at American University, testified about the need for greater ballot access and the historical importance of greater access.</p> <p>Scott Becker testified on behalf of the Coalition for a Democratic Maryland on the need for increased ballot access.</p> <p>Pat Cummings testified on behalf of the Reform Party on her experiences as an independent candidate for House of Delegates in 1994 and the need for easier and fairer ballot access.</p> |
| November 27, 1996               | <p>Representatives from the United States Postal Service (USPS) gave a presentation on ways the USPS can assist state and local governments with voter registration list maintenance.</p>  |
| January 15, 1997                | <p>Pat Cummings of the Reform Party of Maryland addressed the Commission regarding the ballot access and party recognition recommendations.</p>  |
| February 12, 1997               | <p>Carol Evans and Robert Antonetti, directors of local election boards, discussed the responses of the Legislative Committee of the Maryland Association of Election Officials to the revised titles on registration and State and local boards.</p>  |
| March 12, 1997                  | <p>Robert Antonetti, Barbara Feaga, Barbara Jackson, and Richard Goehler, representing various local elections boards, testified regarding the administrative difficulties that would be caused by changing the close of registration to a date closer to the election.</p>  |
| May 7, 1997                     | <p>Peter Francia, doctoral candidate in Political Science at the University of Maryland, testified at the request of Secretary Willis on the effect of voter registration deadlines on voter turnout.</p>  |

| <u>Meeting Date</u> | <u>Speakers</u>  |
|---------------------|--|
| June 26, 1997       | Rebecca Wicklund of SABEL answered questions from the Commission members on the topic of financial reports for petitions.  |
| August 6, 1997      | Henry Marshall raised a question about whether it was necessary to appoint the Secretary of State as the chief state election official for purposes of NVRA.   |
| September 3, 1997   | Robert Antonetti, Director of the Prince George's County Board raised a question of whether the law should prohibit the copying of official forms of a local board.  |
| October 6, 1997     | Deborah Povich of Common Cause requested certain changes in the law to cure a loophole in the campaign finance laws relating to certain business entities that are wholly owned by other business entities. She also requested that PACs be more closely monitored as to the actual source of contributions.   |
| October 15, 1997    | Henry Marshall questioned which official at the local level would have responsibility for NVRA.<br><br>Barbara Feaga and Carol Evans, directors of local boards, raised several questions on a variety of different topics during the Commission's final review of the revised titles.   |
| November 12, 1997   | Sharon Maneki, President of the National Federation of the Blind of Maryland, spoke about the need to ensure nonvisual access to voting.<br><br>Barbara Feaga, President of the Maryland Association of Election Officials, addressed a variety of concerns of the local board directors.<br><br>Dean Ahmad, Chairman of the Coalition for a Democratic Maryland, addressed several concerns regarding ballot access for minor parties.<br><br>Nancy Orr of the League of Women Voters of Maryland stated the League's support for certain provisions of the revised Election Code.<br><br>William Plies, an attorney from Baltimore, asked the Commission to consider requiring that notice, an explanation, and the opportunity to be heard be provided to a voter when the voter's absentee ballot is rejected. |

*Individuals Who Testified Before the Commission*

*Page 4*

| <u>Meeting Date</u>              | <u>Speakers</u>  |
|----------------------------------|--|
| November 12, 1997<br>(continued) | <p>Patricia Cummings, former Chairman of the Maryland Reform Party spoke about the need for greater ballot access for minor parties and the ways minor parties could be included on State boards and commissions.</p> <p>Lorenzo Gaztanaga spoke about accommodating minor parties.</p> <p>George Neilson, an attorney in private practice and formerly with the Attorney General's Office, and Carmen Shepard, Deputy Attorney General, discussed the need for clarification of the procedures for challenges to gubernatorial elections.</p> |

## APPENDIX G

### WRITTEN TESTIMONY AND SELECTED POLICY STATEMENTS RECEIVED BY THE COMMISSION

1. Sharon Maneki, President, National Federation of the Blind. August 21, 1996.
2. Deborah Povich, Executive Director, Common Cause of Maryland. October 2, 1996.
3. Joyce Lyons Terfles, Chairman of the Maryland Republican Party. October 2, 1996.
4. Joan Paik, President, League of Women Voters of Maryland. October 2, 1996.
5. Harry R. Hughes, Chair, Maryland Democratic Party. November 1, 1996.
6. Allan J. Lichtman, Professor of History, American University. November 8, 1996.
7. James G. Gimpel, Professor of Government and Politics, University of Maryland, College Park. November 8, 1996.
8. Jamin B. Raskin, Professor of Law, Washington College of Law. November 8, 1996.
9. Paul S. Herrnson, Professor of Government and Politics, University of Maryland, College Park. November 8, 1996.
10. Barbara Robson, Candidate for U. S. Congress, Natural Law Party. November 8, 1996.
11. Henry C. Marshall. January 23, 1997.
12. Deborah Povich, Executive Director, Common Cause of Maryland. October 8, 1997.
13. William Plies. November 12, 1997.
14. Sharon Maneki, President, National Federation of the Blind of Maryland. November 12, 1997.
15. I. Dean Ahmad, Chairman, Coalition for a Democratic Maryland. November 12, 1997.
16. Patricia Cummings, Ballot Access Liaison, Reform Party of Maryland. November 12, 1997.
17. Steven E. Boone, Chair, Maryland Libertarian Party. November 12, 1997.
18. Barbara Feaga, President, Maryland Association of Election Officials. November 12, 1997.
19. Nancy Orr, League of Women Voters of Maryland. November 12, 1997.
20. Robert O. C. Worcester, President, Maryland Business for Responsive Government. January 8, 1998.





# **National Federation of the Blind of Maryland**

**Sharon Maneki, President**

**August 21, 1996**

**Marie M. Garber, Chairman  
Commission to Revise Election Code  
10201 Grosvenor Place, #310  
Rockville, MD 20852-4606**

**Dear Ms. Garber,**

**The National Federation of the Blind of Maryland is a self-help advocacy organization of blind persons, promoting equal rights and equal opportunities for the blind. The National Federation of the Blind of Maryland is the oldest and largest organization of blind persons in the state.**

**Please incorporate the following recommendation into your final report on revisions of the election law code:**

**Eliminate the requirement for completing and signing affidavits concerning voting assistance rendered to blind and visually impaired voters at the polls.**

**Justification: State and federal laws grant each blind person the right to cast a ballot at a polling place with the aid of a person of one's choice, or with the aid of election judges at the polling place. In the latter case, such aid must be provided by two election judges, one from each major political party. These assistance rules have been very effective in enabling blind persons to cast their ballots, and should be continued. However, the Commission to Revise Election Code should take this opportunity to simplify the record-keeping procedures for blind voters who are being assisted by other persons. The requirement for completing and signing affidavits describing who was assisted, and who rendered the assistance, should be eliminated. It is archaic, and draws undue attention to the voter who is being assisted. The argument that these affidavits are required to prevent fraud and abuse is specious. If a blind voter has selected his own assistant, there is no reason to believe that he would use someone who could not be trusted to carry out his instructions. If two election judges from opposing political parties are used for assistance, it is the responsibility of each judge to observe the actions of the other, thereby maintaining the integrity of the blind voter's ballot.**

Elimination of these requirements will encourage greater participation in the election process by blind or visually impaired persons. Thank you for considering our recommendation.

Sincerely,

Sharon Maneki

cc: commission members





**common  
cause**

**MARYLAND**

Deborah Povich, Executive Director  
Bobbie Walton, Director of Research

1 King Charles Place, P. O. Box 942  
Annapolis, MD 21404

(301) 261-1566 (DC area)  
(410) 269-6888 (Balt/Annap)

## **Testimony to the Commission to Revise the Election Code**

### **Common Cause/MD Governing Board**

Samuel H. Boyer  
President  
-Towson  
John Wm. Smith  
Vice Pres  
-Rockville  
Anne Dauria  
Sec/Treas  
-Baltimore

Armin Behr  
-Bethesda  
Doug Behr  
-Kingsville  
Terezie Bohrer  
-Bowie  
Oscar Carlson  
-St. Michaels  
Risselle Fleisher  
-Baltimore  
Robert Glenn  
-Cheltenham

Jim Griffin  
-Bethesda  
Peg Gunter  
-Bethesda  
Tom Hattery  
-Mt. Airy  
Carroll Holzer  
-Towson

Dawn Kane  
-Annapolis  
Daniel Katz  
-Millersville  
Sandy Laken  
-Glyndon  
Rumi Matsuyama  
-Hyattsville

Albert Naeny  
-Bozman

Alvin Rivera  
-Rockville

Lin Schmidt  
-Ijamsville

### **Ex-Officio Members**

Patricia Stocker  
-Bethesda  
Peter Brown  
-Hyattsville

**FROM:** Deborah Povich, Executive Director

**DATE:** October 2, 1996

The government's role in voting is to promote and encourage individuals to participate in their fundamental right to the franchise. State agencies are responsible for ensuring citizen access to the polls and conducting fair elections. Any policies or laws that hinder an individual's access to vote is contrary to the very concept of our democracy.

Unfortunately, Maryland ranks in the bottom half of all states in voter registration, and has done so for over a decade. Of the 49 states that track voter registration as a percent of the voting population, Maryland held the following ranks: in 1994 number 42; in 1992 number 40; in 1990 number 44; in 1988 number 37; in 1986 number 38; in 1984 number 32. These are abysmally low rankings.

Registration is a prerequisite to voting. Common Cause/Maryland recommends improvements in the area of voter registration as a step toward improving voter participation. We support activities that increase convenience, simplicity and uniformity in voting procedures. Common Cause/Maryland recommends significantly shortening the voter registration cut-off deadline from the current 29 days before an election. All deterrents to voter registration should be eliminated so that citizens are provided with an easy opportunity to participate in a basic element of democracy -- the right to vote.

Maryland has taken steps toward removing barriers from voter registration. Most notably, Maryland was at the forefront of states that established voter registration by mail. Yet our state continues to have low registration and low participation.

In the states that have election day registration, the percent of the voting age population that are registered to vote is significantly higher than in states without election day registration. According to a study by the Congressional Research Service, a division of the Library of Congress, the difference in registration figures varies between 12 and 15%.

**Percent National Turnout in Presidential Election  
for State with an Without Voter Registration:  
1976-1992\***

|      | States with<br>Election Day<br>Registration<br><u>(%)</u> | States without<br>Election Day<br>Registration<br><u>(%)</u> | Differences<br><u>(%)</u> |
|------|---|--|---------------------------|
| 1992 | 70.27   | 54.53  | 15.74                     |
| 1988 | 62.80   | 49.52  | 13.28                     |
| 1984 | 64.64   | 52.41  | 12.23                     |
| 1980 | 66.54   | 51.70  | 14.84                     |
| 1976 | 66.88   | 52.73  | 14.15                     |

\*Percentages shown are of the voting age population that cast a vote for the highest office. (From CRS Report for Congress, *Voter Registration and Turnout: 1948-1992*, Royce Crocker, Jan. 6, 1994)

According to Curtis Gans, of the Committee for the Study of the Electorate, the 1994 election "provided further evidence that some changes in registration law can enhance voter turnout. The three states that implemented election day registration for the first time in the 1994 election all experienced significant upticks in turnout -- Idaho (up 6.1 percentage points), New Hampshire (up 1.7) and Wyoming (up 8.6)..."

We urge the Commission to recommend shortening the voter registration cut-off deadline to the shortest deadline that is administratively possible. We believe that moving toward election day registration will enhance both voter registration and voter participation. This step will help strengthen our democracy by expanding participation in the political process.



# MARYLAND REPUBLICAN PARTY

**Joyce Lyons Terhes**  
*Chairman*

Joyce Lyons Terhes, Chairman of the Maryland Republican Party  
Testimony Before the Commission to Revise Election Laws  
October 2, 1996

Good morning, it is a pleasure to be here. I am here on behalf of the Maryland Republican Party to provide some suggestions for the committee while you are studying voter registration. The Commission's task is extremely important and beneficial to the voters of the state of Maryland. I want to thank you your for time and efforts to evaluate the laws regulating voter registration.

While I support efforts to make voter participation easier for Marylanders, I also support efforts to make certain all agencies implement voter registration, competently, efficiently and in a uniform process statewide.

Recently the Department of Social Services and the Department of Motor Vehicles conducted a mailing of 1,000,000 pieces of either voter registration forms or verification notices. The cost of this mailing was approximately \$300,000. With the deadline for voter registration October 7, this mailing has created problems for the local election boards as they are preparing for the November 5th, General Election. This mailing was prepared in a haphazard manner since no effort was made to segment out already registered voters or remove the names of ineligible voters i.e. aliens, or felons. It appears that the state is not fully complying with Motor Voter.

The National Voting Rights Act (Motor Voter) states that an election board shall notify each mail voter registration applicant of the disposition of the application, and if this notice is sent by nonforwardable mail and is returned, the Board may remove a voter's name from the voter roll in accordance with Section 3-17A of the Election Code. As the law is currently written, each election board has the option to send the notice via nonforwardable mail. The election boards should be required to send the notices by nonforwardable mail. Sending the notices back by nonforwardable mail will ensure that the election board has a valid mailing address and will also flag individuals who have invalid addresses.

I believe Maryland is only one of five states in the country that does not currently require people to show identification before voting. To ensure validity upon arriving to vote, each voter should be asked his/her address once the voter has identified himself/herself. Under current law, Section 15-4 is ambiguous (proof of birth date), and as a result, most voters are permitted to vote without presenting identification. Section 15-4 should be amended to require such identification prior to voting as well as the date of birth, excluding the year in my case.

Section 3-17A(b)(1) of the Election Code states that each election board shall periodically make a reasonable effort to remove persons from the voter rolls who have become ineligible by reason of change of address. Section 3-17A(b)(5)(I) further provides that, if it appears from information provided by the postal service that a registrant has moved to a different residence not within the same registrar's jurisdiction, the election board shall start the lengthy process which may, over years, result in the removal of the registrant from the voter rolls. The problem with the Code is that there are no mandated directives to determine whether voters have moved to new addresses, and until this information has been received "from information provided by the postal service," the process cannot begin. The Code should direct the election boards each year to select those voters who have not voted within the five preceding calendar years and to send those voters letters by nonforwardable mail to verify their address. Failure to vote in five years suggests that the voter may have died or moved away. These letters would help the election boards in maintaining accurate voter rolls. Such inquiry letters might be returned as nonforwardable, thus providing the necessary "information provided by the postal service." In addition, the letters might generate requests that the voters re-register at their new addresses. It is important that these steps be taken, or else, with each passing year, the voter rolls will contain names of more and more people who have died or moved away but whose names never come to the attention of the election boards in a way which would permit the boards to initiate the removal process. The more people who die or move away but whose names clutter the voter rolls, the greater the expense a campaign must bear when doing voter contact.

This key component of "Motor Voter" is the cleansing of the voter rolls. The process can take a minimum of 25 months to a maximum of 49 months and all election boards must follow a federally mandated procedure.

It is my understanding, that the State (SABEL) is leaving the "program or activity" up to the individual counties which is not uniform throughout the state. Section 8 (a) (4)(b) says "... conduct a general program that makes a reasonable effort to remove the names of ineligible voters...." There is no mention as to the type of activity and timing of the same.

Currently, as of 8/31/96, the State has a total of 2,462,987 registered voters identified as ACTIVE; however, if the INACTIVE voters were identified and segregated, the total ACTIVE voters would be reduced to approximately 2,419,146 voters. "Any state program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll... shall be uniform, non-discriminatory and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.)"--Section 8(b)(1).

I believe that the key factors contributing to accurate voter rolls are computer address programs offered by a third party such as the U.S. Federal Government through the U.S. Postal System. These computer programs have been available for approximately 10 years and are as follows:

1. NCOA - National Change of Address system, suggested and recommended under "Motor Voter."
2. CASS - Coding Accuracy Support System - mandatory for all volume mailers twice a year beginning January 1, 1997, optional now.
3. DSF - Delivery Sequence File -- optional now.

It has taken a lawsuit filed by the NAACP to make SABEL comply with the voter registration component of Motor Voter. I ask you ladies and gentleman - will it take the Maryland Republican Party's filing a lawsuit to make SABEL comply with the federally mandated purging process.

I encourage the committee to adopt these proposals for revision to voter registration. These proposals will help Maryland maintain an accurate, complete, and updated voter roll. Americans fought long and hard for our democratic process and is too sacred to take any chance with its integrity.



**LEAGUE OF WOMEN VOTERS OF MARYLAND INC.**  
**200 Duke of Gloucester St., Annapolis, Md. 21401**

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Phone 410-269-0232  
Fax 410-268-7301

**TESTIMONY PRESENTED TO THE COMMISSION TO REVISE THE ELECTION  
CODE**

**PRESENTED BY JOAN PAIK, PRESIDENT**

**OCTOBER 2, 1996**

Madame Chair and members of the Commission, I am pleased to be here today to express the support of the League of Women Voters of Maryland as you consider revisions to current laws governing the election process. As you know, the League has worked for 75 years, beginning with the women's suffrage movement, to support the right of every citizen to vote.

From the national Voting Rights Act of 1965 to the National Voter Registration Act of 1993 ("Motor Voter"), to the Maryland League's support of uniform voter registration forms (1985) and strengthening of the State Administrative Board of Election Laws (1988), we have fought to assure that election systems are accessible, equitable, fiscally responsible, accountable, and enforceable.

In that regard, the League is in the process of a two-year comprehensive study which will address possible changes in election law or regulations pertaining to the appropriate roles of SABEL and local election boards, the use of computers in vote recording and counting, voter registration, absentee ballot procedures, the selection and training of election judges, funding of elections, and the implementation of "Motor Voter".

Our initial findings point to several inconsistencies in how elections are currently carried out in Maryland. For example: jurisdictions with similar populations have widely differing numbers of voting precincts; sample ballots are not uniformly available; many different voting systems are in use; verification of voter identification differs among and within jurisdictions; training, recruitment, and payment of election judges varies widely; and changes in voter information are processed differently.

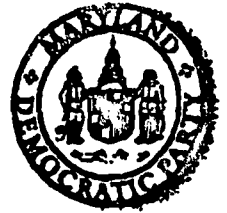
Some of these inconsistencies may well be appropriate -- a major question we hope to answer through our study and consensus process is how much uniformity should exist in conducting elections. In January, we will ask our 2000 members for agreement on how the League should react to various legislative and regulatory proposals governing the election process.

**p. 2 LWVMD TESTIMONY TO THE COMMISSION TO REVISE THE ELECTION  
CODE**

**In conclusion, I commend this commission as it approaches the difficult work before it. And, I reiterate the League's principles which we hope will guide your recommendations: that there be fair campaigns and elections, with a system which assures public confidence in the integrity of the election process, and that registration and voting be open and accessible, with the fewest possible barriers to participation. Thank you.**



# Maryland Democratic Party



Parris N. Glendening  
Governor

Harry Hughes  
Chair

Mary Jo Neville  
Vice Chair

Peter Krauser  
Second Vice Chair

Nancy Kopp  
Secretary

Kenneth Wilson  
Treasurer

Democratic National  
Committee Members:

Clarence W. Blount  
Beatrice Tignor  
Susan Turnbull

November 1, 1996

Ms. Marie Garber, Chair  
Commission to Revise the Election Code  
Attn: Bill Somerville  
Department of Legislative Reference  
90 State Circle  
Annapolis, MD 21401

Dear Ms. Garber and Members of the Commission:

I would like to thank you for this opportunity to submit comments on behalf of the Maryland Democratic Party for your consideration as you approach the important task of evaluating and suggesting revisions to the Maryland election code. The Maryland Democratic Party is prepared to work closely with you as you proceed in this effort, and will be happy to provide you with any additional information you require, including specific recommendations, at any future time in these proceedings.

In connection with your first hearing on the subject of voter registration, I would like to submit for your consideration the following specific areas where we believe improvements could be made in this regard. Please be advised that the State Democratic Party will have additional comments relating to other areas under discussion by the commission, which we would like to submit to you separately, most likely after the November 5th elections.

Let me state at the outset that it is the longstanding policy of the Maryland Democratic Party that the right to vote is one of our nation's most treasured freedoms, and therefore the process of registering to vote should be made as convenient as possible to all eligible citizens. Thus, we would urge the commission to consider ways to eliminate barriers to registration wherever possible, while recognizing the need for adequate safeguards to guarantee the integrity of the process. Our primary goal should be to encourage as many people as possible to participate in future elections in Maryland.

As you know, many states have moved forward with a variety of election law reforms aimed at encouraging more citizens to register and vote, including everything from "same-day" registration on election day to "mail-in" balloting. Some of these reforms may be appropriate here in our state. Maryland currently ranks in the lower 40% of all the States in terms of overall ease of registration.

The following provisions in Maryland's current election code have been identified as potential barriers to registration, some of which you may wish to address:

**1. Registration Cut-off Date:** Current law requires that voter registration closes 29 days before the general election. This is a longer period than in many states, and may act to reduce the number of citizens who register to vote. The level of public attention focussed on the general election typically begins to build after Labor Day, and reaches its highest point by late October. In Presidential years, this is typically between the time of the major televised Presidential debates and election day (which this year is scheduled for November 5th). Unfortunately, this year's first Presidential debate is scheduled for October 6th, just one day before the final deadline for voter registration (which closes October 7th), nearly one month before the election (the remaining debates take place well after registration has closed, on October 9th and October 16th). The likely result is that by the time many potential voters realize an election is coming up, and begin to focus on the candidates, they have already missed the deadline, leaving them unable to participate in the election.

Reducing this time period from the current 29 days to between 10 and 14 days would help increase participation and would still give state and local election officials adequate time before election day. The fact that Maine and other states allow election-day registration and have experienced no significant increases in fraud or other serious problems suggests that reducing the length of the period in Maryland is a realistic option.

**2. "Motor-voter" Compliance:** Another suggestion that has been brought to our attention is to address what appears to have been an uneven level of effort made by various state agencies to encourage voter registration among that agency's clientele. By most accounts, the Motor Vehicle Administration has gone further in terms of making registration forms available and encouraging each customer to register to vote than other State agencies. Other agencies should be encouraged to take further steps to insure that their clientele are receiving the same level of attention. Consideration might also be given to the idea of allowing county agencies to provide registration forms and assistance to their clients. Again, the goal should be to increase participation across the board.

**3. Local Outreach Efforts:** The election code should be revised to allow local boards the flexibility to design their own outreach efforts to make the registration process more convenient to the citizens of that jurisdiction. For example, one county may wish to carry out an outreach program in the schools. One may wish to concentrate on county health centers, or Motor Vehicle offices. Another may wish to focus on senior citizen centers. The State Administrative Board of Elections should be given the ability to authorize such local outreach efforts.

November 1, 1996

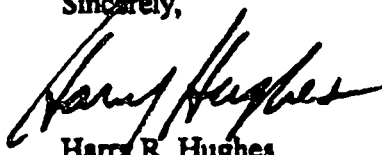
Page 3

**4. Voter Registration/Jury Selection:** It is a widely held belief, even in jurisdictions where this is not the case, that registering to vote makes one eligible to be called for Jury duty. This has the effect of discouraging some people who may not be able to, or may not wish to, serve on a jury from registering to vote. Each County and Baltimore City should be required to use both their motor vehicle and voter registration files to identify potential jurors rather than just the voter file, and consideration ought to be given to using a combination of other sources as well. Every effort should be made to let people know that registering to vote will not automatically put one on the list for jury duty.

**5. Purging Voter Files:** When voter files are purged to eliminate inactive voters, it has been common practice to send out written notices to people who are about to be removed from the voter file. Since some percentage of these individuals have moved and may not receive a notice by regular mail, consideration should be given to the idea of requiring local boards to conduct additional publicity efforts, including radio and television public service announcements, to inform the public whenever any purging is taking place.

I hope you find these comments useful. Please do not hesitate to call on us for further information. Thank you for your time and attention.

Sincerely,



Harry R. Hughes  
Chair



TESTIMONY OF ALLAN J. LICHTMAN  
BALLOT ACCESS IN THE STATE OF MARYLAND

My name is Allan J. Lichtman. I am a resident of Bethesda, Maryland. I am a Professor of History at American University in Washington, D.C. and formerly Associate Dean of the College of Arts and Sciences. The purpose of this testimony is to examine the contributions to American politics made by third parties and to analyze the obstacles to third-party ballot access posed by Maryland's signature requirement.

I am the author or co-author of six books and more than 100 scholarly and popular articles in such journals and newspapers as the American Historical Review, the Proceedings of the National Academy of Sciences, the New Republic, the Washington Monthly, the New York Times, the Washington Post, the Christian Science Monitor, and the Los Angeles Times. My books include, Prejudice and the Old Politics: The Presidential Election of 1928 (1978), The Thirteen Keys to the Presidency (1990), and The Keys to the White House (1996). Each of these books as well as several of my articles analyze aspects of the history of third parties in the United States. The press has frequently cited my analyses of third parties, including articles in the New York Times and USA Today. I have appeared as an expert analyst of third parties for C-SPAN, the McNeil-Lehrer report, and National Public Radio. I have also provided commentary on politics and history for all major U.S. television and radio networks, the Voice of America, Worldnet television, and numerous foreign broadcast companies. My Thirteen Keys system for predicting presidential election results has been published in numerous languages throughout the world. Currently, I am a regular commentator for NBC Nightside and the Canadian Broadcasting Company. I write

a bi-weekly column for the Montgomery Journal newspaper and for the Reuters News Service.

I have been an expert witness in more than 50 federal voting rights cases, working for plaintiffs, defendants, and non-partisan commissions. I have been recognized as an expert on third parties by the District Court and the Eleventh Circuit Court of Appeals in New Alliance Party v. Hand and by the District Court in Citizens to Form a Reform Party v. Priest.

For more than 200 years, the United States has enjoyed a stable system of party competition. Although two parties have generally dominated American politics, third parties and their presidential candidates have enriched and invigorated government and society in the United States. Third-force presidential campaigns, whether inspired mainly by ideology or protest, are integral to American politics and serve purposes that cannot be achieved by major party efforts. The dominant parties may be unresponsive to changing circumstance or to the needs of particular groups within the electorate. Major parties may be unable to accommodate new ideas and positions and may nominate candidates antagonistic to large numbers of voters. Moreover, third-party and independent campaigns replace, revitalize, and revamp the major parties and thereby preserve the stability of America's political process. Our two-party political system has remained stable precisely because third forces provide outlets for dissent and promote orderly change.

Scholars have long recognized the vital functions of third parties in the United States. In his 1933 presidential address to the Organization of American Historians, the renowned historian John D. Hicks observed that "the United States has never possessed for any considerable period of time the two-party system in its pure undefiled

form." Not only has "one third party succeeded another with bewildering rapidity," but "contrary to the customary view, these third parties have seriously affected the results of presidential elections, have frequently had a hand in the determination of important national policies, and have played perhaps quite as important a role as either of the major parties in making the nation what it is to-day."<sup>1</sup> More than sixty years later, in their 1996 text Approaching Democracy, political scientists Larry Berman and Bruce Allen Murphy concluded that, "By being the first to champion original ideas that may later become widely endorsed, minor parties perform a major service for the Democratic process. But even if their ideas never get adopted, they at least bring open discussion of new proposals, force mainstream groups to rethink and justify the status quo and give life to key democratic norms, such as free speech and the right of all citizens to organize to promote their interests."<sup>2</sup>

Since the 1830's, third-party and independent candidates for president have successfully pressed for new ideas that the major parties were unwilling to offer. Often representing significant segments of the electorate, they have advanced innovative policies, influenced the structure of major parties, and changed political practice in the United States. Perhaps the first significant third-party movement was -- the Anti-Masons -- organized during the presidency of Andrew Jackson. Not only did its 1832 presidential candidate, William Wirt, garner a respectable 8 percent of the popular vote,

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<sup>1</sup> John D. Hicks, "The Third Party Tradition in American Politics," The Mississippi Valley Historical Review 19 (1933), 3-4.

<sup>2</sup> Larry Berman and Bruce Allen Murphy, Approaching Democracy (Upper Saddle River, New Jersey: Prentice Hall, 1996), 349.

but the Anti-Masonic banner in 1832 had some influence on its times. During an era in which clandestine organizations abounded, the Anti-Masons "had called attention to the dangers of secret societies in a democracy and had forced some of them -- including Phi Beta Kappa -- to come out of hiding."<sup>3</sup> The Anti-Masons also organized the first national nominating convention, a mechanism that the major parties later adopted for selecting their own national candidates. Anti-Mason organizers such as Thaddeus Stevens of Pennsylvania later assumed leadership positions within the major parties.

Sixteen years after the emergence of the Anti-Masons, the Free Soil campaign of former president Martin Van Buren in 1848 directed public attention to the issue of restricting the spread of slavery -- an issue that the major parties had sought to obscure. The Free Soil party, wrote its historian Frederick J. Blue, "along with the abolitionists, had kept the issue of slave extension alive until the North was finally ready to listen. The Republican party thus had the advantage of building on an issue that the Free Soilers had helped to develop."<sup>4</sup> Republican chieftains of the 1850's also "learned from the mistakes of the Free Soilers," wrote Professor Blue. "The Republicans learned to stress local organization more and made a greater attempt to coordinate local and national issues."<sup>5</sup>

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<sup>3</sup> William B. Hesseltine, The Rise and Fall of Third Parties (Washington, D. C.: Public Affairs Press, 1948), 11.

<sup>4</sup> Frederick J. Blue, The Free Soilers: Third Party Politics 1848-54 (Urbana: University of Illinois Press, 1973), 287.

<sup>5</sup> *Ibid.*, 287.



The Republican Party itself arose as a third-force movement during the 1850's, a time of great political fluidity in the United States. As the slavery issue was causing the Whig Party to disintegrate and the Democrats to fragment, two loose coalitions of political groups jockeyed for position as a major party -- the antislavery Republicans and the nativist Americans, or Know-Nothings. Although both won significant state elections in 1854 and had over 100 adherents in the House of Representatives, the Republicans emerged in 1856 as the main contender against the Democrats and solidified their position in the North during the ensuing four years. The party then stood not only for ending the expansion of slavery, but also for homestead legislation, a protective tariff and a program of internal improvements. In 1860, the Republican nominee, Abraham Lincoln, gained the presidency in a race that included Southern Democrat John C. Breckinridge and Unionist John Bell as well as the Democratic contender, Stephen A. Douglas. Eventually, "the Republicans assimilated former Whigs, Know-Nothings, Constitutional Unionists, and even Democrats," wrote political scientist Gerald Pomper.<sup>6</sup>

During the late nineteenth century, a host of third parties challenged the Republicans and Democrats who offered equally stand-pat positions on most national issues. The Prohibition Party, for instance, although it never gained a mass following, competed in presidential elections during most of the late nineteenth century. It not only advocated the prohibition of alcohol, but also supported woman's suffrage many decades in advance of either major party. The most important third party of the era was the People's or Populist Party that united Midwestern and Southern agrarians behind the presidential candidacy of James B. Weaver in

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<sup>6</sup> Gerald Pomper, "The Classification of Presidential Elections," Journal of Politics 29 (1967), 553.

1892. The People's Party faded four years later when the Democrats nominated William Jennings Bryan, who espoused many of their ideas. Although the Populists never fully realized their broad vision for recasting American society, as electoral analyst Nancy Zingale has observed, much of the Populist program "became that of the Democrats at both the state and national levels."<sup>7</sup> Populist ideas such as the regulation of railroads, the adoption of a more flexible and elastic currency, and the use of the initiative and referendum have since become accepted features of American government. Third-party activity during the late nineteenth century brought forth hundreds of new political leaders many of whom remained active in major party politics.

During the early twentieth century, the candidacies of ex-president Theodore Roosevelt in 1912 and Robert M. LaFollette in 1924 both reflected ideas of the progressive movement of that era and advanced measures later adopted during Franklin D. Roosevelt's New Deal. These include social security, the minimum wage, and collective bargaining rights for labor. Theodore Roosevelt finished second in the presidential election of 1912, with 27 percent of the popular vote, the largest ever tallied by a third-party or independent candidate. LaFollette garnered nearly 17 percent of the popular vote in 1924. Theodore Roosevelt's Progressive movement also spawned New Dealers such as Harold Ickes, Edward P. Costigan, and Bronson Cutting.

During Franklin D. Roosevelt's crucial first term, the probability of a third-force

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<sup>7</sup> Nancy H. Zingale, "Third Party Alignments in a Two-Party System: The Case of Minnesota," in Joel H. Silbey, Allan G. Bogue, and William H. Flanigan, eds. The History of American Electoral Behavior (Princeton: Princeton University Press, 1978), 132-33.

campaign from the left was one of several factors that influenced his support for such programs as Social Security, the Works Progress Administration, and the National Labor Relations Act. Emil Hurja, Roosevelt's pollster, estimated in 1935 that an independent candidacy by the populist Louisiana Senator Huey P. Long might attract several million voters, mainly from the Democratic party. According to FDR's chief political advisor, James A. Farley, the President moved in 1936 to "steal Huey's thunder" by offering new programs and castigating "economic royalists."<sup>8</sup>

In 1968, third-force candidate George Wallace garnered 13.5 percent of the popular vote. During his high-profile campaign, Wallace argued for reversing civil rights and affirmative action programs, and for limiting the powers of the federal government and its "pointy headed" bureaucrats. He also advocated controlling civil disobedience, reducing taxes, restricting government intervention in the economy, and pursuing a policy of military victory in Vietnam. Aspects of his conservative populism would be co-opted by the Republican party during the 1970's and would profoundly influence political debate and public policy. George Wallace pioneered the funding of presidential campaigns through small contributions solicited by direct mail appeals. According to the closest student of the Wallace campaign, he was "the most influential loser in twentieth-century American politics."<sup>9</sup>

In 1980, disillusioned with the leadership of president Jimmy Carter and with the

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<sup>8</sup> James A. Farley, Behind the Ballots (New York: Harcourt, Brace, and Company, 1938), 249-250.

<sup>9</sup> Dan T. Carter, The Politics of Rage: George Wallace, the Origins of the New Conservatism and the Transformation of American Politics (New York: Simon and Schuster, 1995), 468.

power of the New Right within the Republican party, former GOP Congressman John Anderson launched a third-party campaign for president. As an insurgent candidate, Anderson took positions that were too politically perilous for either major-party nominee. He charged both major parties with shirking the hard choices needed in a time of economic austerity and rising budget deficits. He proposed a substantial hike in gasoline taxes to achieve energy conservation and generate revenues for reducing payroll taxes while preserving social security. He attacked Reagan's economic program, charging that the only way to cut taxes, raise defense spending and balance the budget was to do it "with mirrors." Anderson became the first third-party candidate to participate in a presidential debate (one-on-one with Ronald Reagan because President Carter declined to participate). He garnered 6.5 percent of the popular vote and launched a landmark lawsuit (Anderson v. Celebrezze) that helped ease requirements for third-party access to the ballot.

In 1992, businessman H. Ross Perot became the most successful insurgent presidential candidate since ex-president Theodore Roosevelt in 1912. Perot finished with 19 percent of the popular vote, second only to Roosevelt's 27 percent in all American history. Perot appealed to the discontent of many Americans with the policies and leadership of the two major parties. A survey taken in 1992 found that about three out of four Americans agreed with the proposition that "the entire political system was broken – that it was run by insiders who didn't listen to working people and couldn't solve their problems."<sup>10</sup>

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<sup>10</sup> Peter Goldman and Thomas DeFrank, "How He Won," Newsweek Special Election Issue (1992), 23.

Another survey showed that 79 percent of Americans believed that the "government is run by a few big interests."<sup>11</sup>

Although Perot's solutions sometimes lacked specificity, he laid out an approach to achieving fiscal restraint and political reform that went beyond what the major party candidates proposed. Like other third-party presidential candidates, Perot has had a major impact on American politics. He attracted a loyal following of core supporters and his candidacy heightened public interest in the presidential election. Perot pioneered the substantive half-hour television ad as a replacement for the usual 30 second or one minute spot. He brought the issues of fiscal responsibility and political reform into the forefront of the political agenda. During the Clinton administration, both parties joined in adopting a line-item veto and embraced the idea of balancing the budget within a specific period of time. Congress passed new lobbying restrictions and seriously considered major campaign finance reform legislation.

Despite their importance for American politics, third-parties face major obstacles in their efforts to compete with the dominant parties and communicate with the public. These obstacles include the "winner-take-all" system for electing public officials, ballot-access requirements, inadequate resources, a lack of media attention, and co-optation by the major parties.

America's "winner-take-all" system makes it very difficult for third parties to elect their candidates to public office. To gain elective office in the United States a third-party

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<sup>11</sup> Steven J. Rosenstone, Roy L. Behr, Edward H. Lazarus, Third Parties in America (Princeton: Princeton University Press, 1996), 248

candidate must defeat outright the candidates of both major parties. This is true not only for executive offices such as president, governor, and mayor, but also of legislative positions, which are generally elected in single-member districts. Unlike several other democracies, third parties in the United States do not gain legislative representation by garnering a certain percentage of the overall vote.

Financial resources are crucial to the success of political parties, particularly in this era of media-centered politics. Third parties, however, generally have limited access to funding sources. The major contributors to parties and candidates give first priority to incumbent office holders and second priority to those likely to gain election to public office. Third parties without a track record of electoral success are unlikely to attract significant donor support. Moreover, most third parties fail to qualify for the public funds available to major-party presidential candidates. Public funding is accorded only to parties or candidates who won at least 5 percent of the vote in the previous presidential candidates. Funding is allocated in proportion to the third-party share of the major-party vote. Most insurgent candidates for president have been outspent by the major-party candidates by ratios of 50 to 1 or more.<sup>12</sup>

Third-parties also lack the media coverage that is usually crucial to successful campaigns. The indifference of the media contributes to the lack of name recognition for third-party candidates. It reinforces the image that such candidates lack legitimacy and cannot win elections. A study of the presidential election of 1980, for example, showed that "the leading newspapers and weekly news magazines gave Reagan and Carter about ten

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<sup>12</sup> Rosenstone, Behr, and Lazarus, op cit., 29.

times more coverage than all eleven third party and independent candidates combined. This disparity showed up in network television news as well."<sup>13</sup>

Major parties use their power and influence to limit the impact of third-parties.

The major parties often co-opt the ideas, issues, rhetoric and even the leadership of potential rival parties. The major parties also promote negative images of third parties and their candidates and promote the idea that a vote for a third-party candidate is a wasted vote. The major parties also use their control over state legislatures and executive positions to oppose ballot access by third parties. And they have used their influence over the presidential debate process to exclude third-party candidates.

Third parties must often spend much of their time, effort, and resources simply to qualify for a position on the ballot for public office. Major party candidates for president and other offices, in contrast, automatically gain a place on the ballot in each state. Each state sets its own ballot requirements, which typically consist of a certain number of signatures on a party petition, and its own deadlines.

The ballot access requirements in the state of Maryland pose an especially formidable barrier to ballot access by third party candidates. To obtain a position on the ballot in Maryland, state-wide third-party candidates must obtain a number of signatures equal to 3 percent of the state's registered voters. For 1996, this amounts to about 77,000 signatures. A similar 3 percent requirement is imposed on third-party candidates for offices within subdivisions of the state.

Maryland's 3 percent requirement places our state far outside the norm of the American

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<sup>13</sup> Ibid., 33.

states. The enclosed chart summarizes signature requirements for statewide ballot access in the states. To adjust for population differences among the states, the chart measures signature requirements as a percentage of each state's voting age population, according to 1990 Census. Maryland's 3 percent requirement translates into 2 percent of the state's voting age population. That is far beyond typical states, where the requirements are .5 percent or less of the voting age population. In fact, Maryland is among the six states in the nation with the most onerous signature requirements for third-party ballot access.

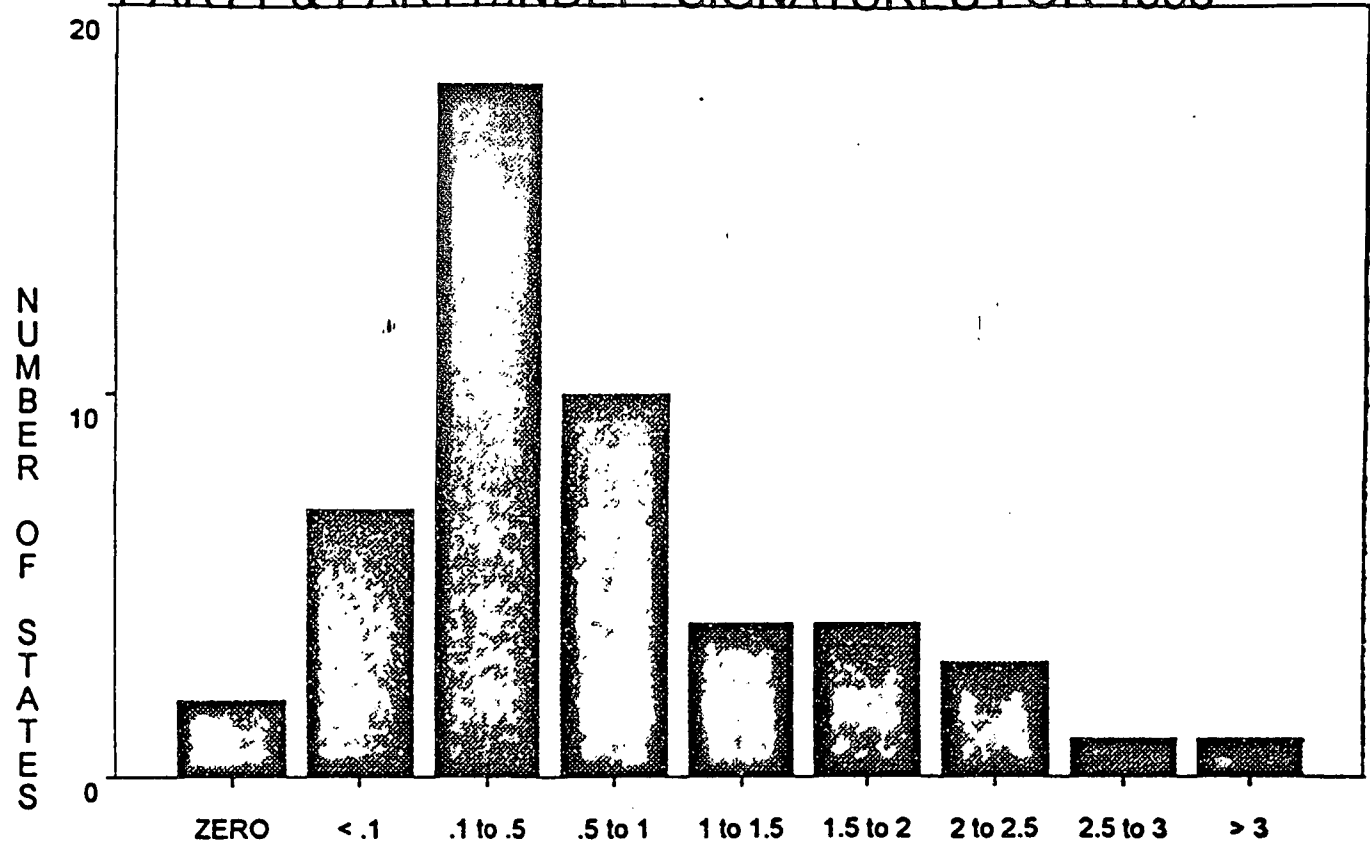
As a result of Maryland's stringent signature requirements, we are the only state in 1996 with no candidates on the ballot for offices other than that of president.

It would not be difficult to remedy this situation. A signature requirement of .5 percent of registered voters would translate into about .3 percent of the voting population. This would place our state solidly within the norm of signature requirements across the nation. Such a requirement would be more than sufficient to demonstrate a modicum of popular support for third parties seeking ballot access. Given the experience of other states with comparable requirements, the proposed .5 percent of registered voters would pose no risk of creating an overcrowded ballot or voter confusion. It would, however, provide reasonable opportunities for third party candidates to participate in the democratic process of our state.

In sum, third parties have contributed ideas, issues, policy proposals, structural innovations, and leadership to American government and society. They were ahead of the major parties in proposing restrictions of slavery, suffrage for women, and minimum wages for workers. Yet they face formidable obstacles to electoral success. Maryland's onerous signature requirements unreasonably add to those obstacles. It is past time for reform.



# PARTY & PARTY/INDEP. SIGNATURES FOR 1996



% OF VOTING AGE POP.

SOURCE: BALLOT ACCESS NEWS, JULY 20, 1996

SUPPLEMENTED BY RICHARD WINGER, EDITOR



Statement by  
**James G. Gimpel**  
Assistant Professor of Government and Politics  
University of Maryland, College Park  
on Non-Major Party Voting and Registration  
Before  
THE COMMISSION TO REVISE THE ELECTION CODE

November 8, 1996

Mr. Chairman and Honorable Commissioners:

My name is Jim Gimpel. I am an assistant professor of government at the University of Maryland, College Park. I specialize in the field of American voting behavior and teach courses in this area. Thank you for inviting me to speak. I will focus my remarks on the subject of non-major party voting and registration. Included in my testimony are several illustrative charts inspired by the example of that most prominent of third party candidates, Ross Perot. I will keep my remarks brief - shorter than an infomercial.

First, Maryland and surrounding states have never been considered hot-beds of third party activity. I have plotted trends in independent and third party registration for the state of Maryland in the graphic labeled FIGURE 1. This graph shows the gradual upward trend in non-major party registration in the state. While non-major party registration has moved from 7.78 percent of all registered voters in 1980 to 11.09 percent of all registered voters in 1996, this is not an especially dramatic increase. Compared to all other states, Maryland ranks near the bottom in the number of non-major party registrants and non-major party voting. While Ross Perot was winning 20 percent of the vote in 1992, in Maryland, he managed to muster only 14.5 percent (see FIGURE 2). This year, Ross Perot managed eight percent of the vote nationally, but in Maryland less than 7 percent, ranking in the bottom quarter of all states.

It is appropriate to wonder why Maryland is not a strong third-party state. For the answer, we must look to the areas in the country where third-party activity is especially strong. These areas tend to be in the western United States: the Rocky Mountain states and the Pacific states in particular. In comparison, to these states, third parties have had little appeal here for several reasons:

1. Maryland has a well educated electorate and a highly partisan one. This undercuts independent registration and third-party activity. Many political science studies have shown that independent and third-party voters are the most ignorant citizens in American politics. They are not well informed and have little interest in being informed. They don't even consistently turn out to vote. In Maryland, by contrast, we have one of the best educated electorates in the nation, particularly in Prince Georges', Howard and Montgomery Counties. It is little wonder we have fewer independents and third-party voters than most other states. We often take for granted the benefits of being close to Washington and having so many government employees in our midst. Our proximity to Washington ensures an easy access to political information unheard of in states just outside our borders.

Furthermore, the Maryland electorate is both partisan and ideological and has been highly satisfied with the two major parties. The large black community is cohesively and loyally Democratic. Rural Maryland is conservative, loyally Republican and has been for decades. For these reasons, the appeal of third-parties in Maryland is lower than in states just next door. For evidence of this, one need only consider the figures depicted in FIGURE 3 comparing the appeal of third-party presidential candidates in Maryland, Delaware, Pennsylvania and Virginia in three presidential election years. Figure 3 shows that Maryland and Virginia are far less likely to vote for

third-party and independent candidates than Delaware and Pennsylvania.

2. The relative stability of the Maryland population means that people grow-up socialized into the prevailing politics of the community and these habits of thought and behavior stick with them. In Maryland, people come to understand early in life what it means to be a Republican or a Democrat and this identification is enforced by the people they live and work with. In states with highly migratory populations, there is less reinforcement of traditional party attachments. If you grow up in Massachusetts and move to Arizona, the party labels in your new neighborhood are going to have a completely different meaning than they did where you grew up. In response, you may initially be confused by the change and reregister as an independent, if you reregister at all. Several studies have shown that population mobility weakens attachments to the two major parties and increases independent and third-party registration. It is no great surprise that in the counties in Maryland with the largest populations from out-of-state, you also have higher proportions of third-party registrants. Map 1 illustrates the Maryland counties with the highest proportion of third-party registrants. Not surprisingly, the counties with the most third-party registrants are those that have experienced the most rapid population growth. Ann Arundel, Howard, Montgomery and Prince George's all rank in the highest quartile on both growth and third-party registration. By contrast, in areas of the state where there has been little population mobility, such as Garrett and Allegheny Counties, independent registration is the lowest in the state.

3. A relatively dense population in a small area has made Maryland a state that the two major parties can easily organize. In states with large, mostly rural, far-flung populations, the two major parties

have trouble communicating and holding their base. This takes away an advantage that the two major parties have in smaller states with dense populations that can be reached and mobilized at much lower cost. Not as many voters can fall through the cracks of the two-party system in Maryland as in Oregon, Washington State, Arizona or Colorado.

4. Maryland has a history of strong Republican and Democratic political party organizations that are active in the recruitment and financing of candidates. In many of the western states, the major party organizations have never been central to candidate recruitment, fundraising and campaigning. While it is surely accurate to argue that political party organizations have weakened everywhere, they remain much more central to campaigning and officeholding here in Maryland than in the western states. This history of active major party organizations has undercut the organization of minor parties.

Another point worth emphasizing, and this applies nationwide as well as in Maryland, is that those who identify as independents and as third-party voters for purposes of registration often are not truly independents or third-party voters in their behavior. Many self-proclaimed independents are really Democrats or Republicans in disguise. The independent voter is often a myth. Take 1992 in Maryland for example. Network exit polls showed that 72.7 percent of those identifying as independents voted for one of the two major-party candidates. Of those identifying specifically with a third-party, not as independents, 84.6 percent voted for one of the two major-party candidates. So even though Perot was on the ballot, self-proclaimed independents and third-party voters were far more likely to choose either Bush or Clinton.

It seems difficult to conclude from these figures that independents and third party voters are unsatisfied with the two major parties in Maryland or in many other states. Time and time again they find themselves voting for them. The reasons for this are straightforward. People's choices in the voting booth are often shaped by their expectations for who is going to win. People do not want to vote for a sure loser. There is a strong bias against "wasting" one's vote. Some voters will often insist that they are independent or belong to a third-party when in reality their voting is quite predictable.

It is doubtful that changing ballot access laws in Maryland would do much to stimulate third-party activity. Perhaps if electoral conditions were different. If Maryland had a far more migratory population, if Maryland's population was not attracted to the major parties, or if the major parties were particularly weak, inept and ineffective, or if Maryland's population was especially uneducated and non-participatory, the demand for greater third-party access would be more compelling. None of these things seems to be true of Maryland.

I do believe that third-party and independent registration should be closely monitored because electoral conditions do change. Montgomery, Prince Georges' and Howard Counties are experiencing strong growth trends. The sheer number of out-of-state license plates suggests that at least some of these folks are moving in from elsewhere. But even if Maryland finds itself inundated with strangers who are unaccustomed to the culture and orientation of our two major parties this does not mean we should alter our ballot access laws. A more effective response would be to find ways to further the civic education of new residents, provide information about our candidates and parties and eradicate barriers to new voter registration.

In conclusion, my opinion is that the state of Maryland should not encourage third-party and

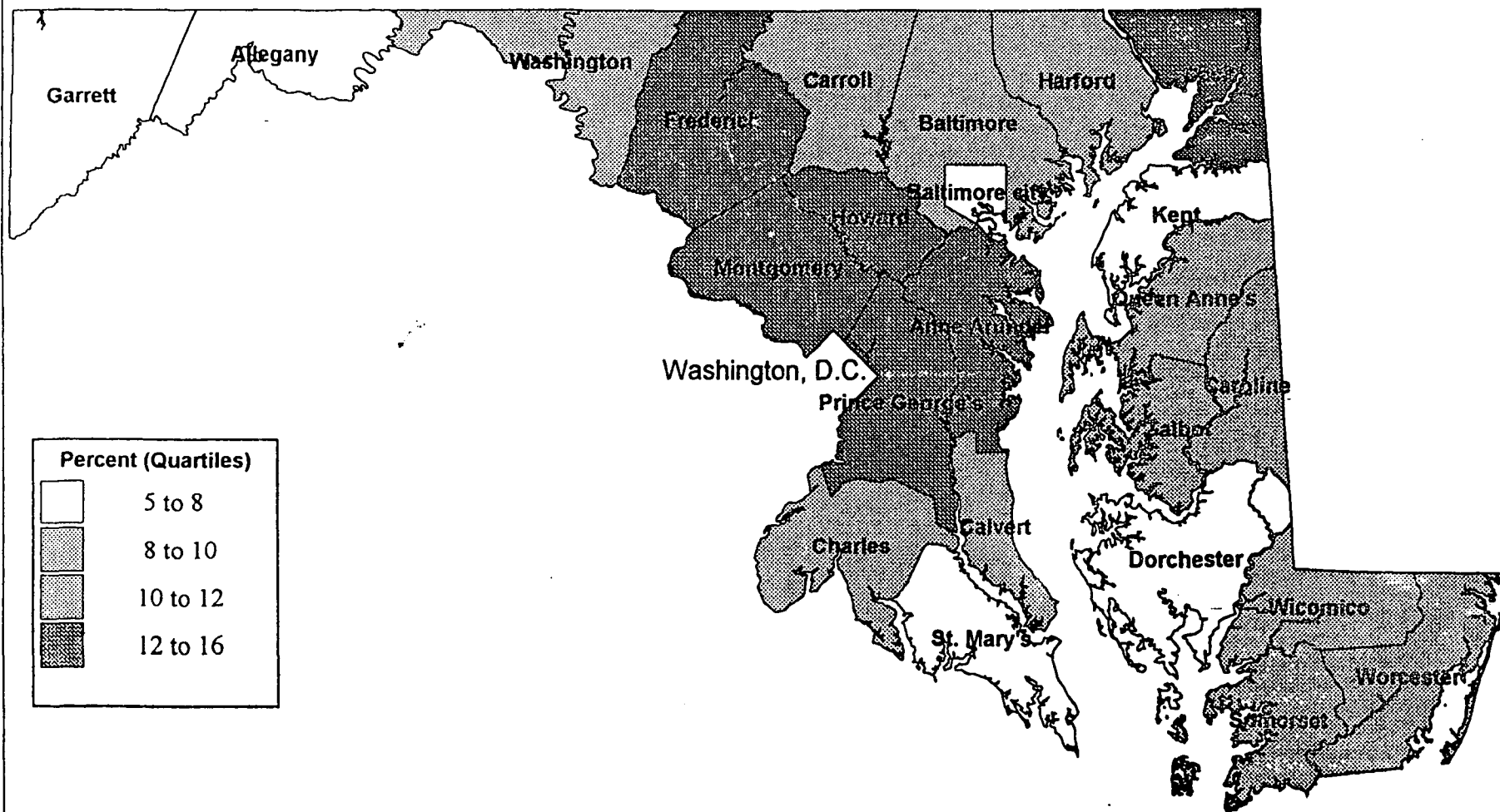
independent registration and voting for the good reasons that Professor Hermson has just mentioned but also because there seems to be little need to do so. New residents to Maryland who may be tempted to gravitate toward third-parties should be encouraged to investigate the policies, positions and issues of our two major parties and learn the political culture of their new community. Current residents who are dissatisfied with the two major parties should be encouraged to air their grievances under the umbrella of the existing two-party system.

Thank you for inviting my input. I look forward to your questions.



# Map 1. Percentage of Non-Major Party Registrants in Maryland Counties, 1996

Source: Maryland State Administrative Board of Election Laws



### MD Non-Major Party Registration 1980-1996

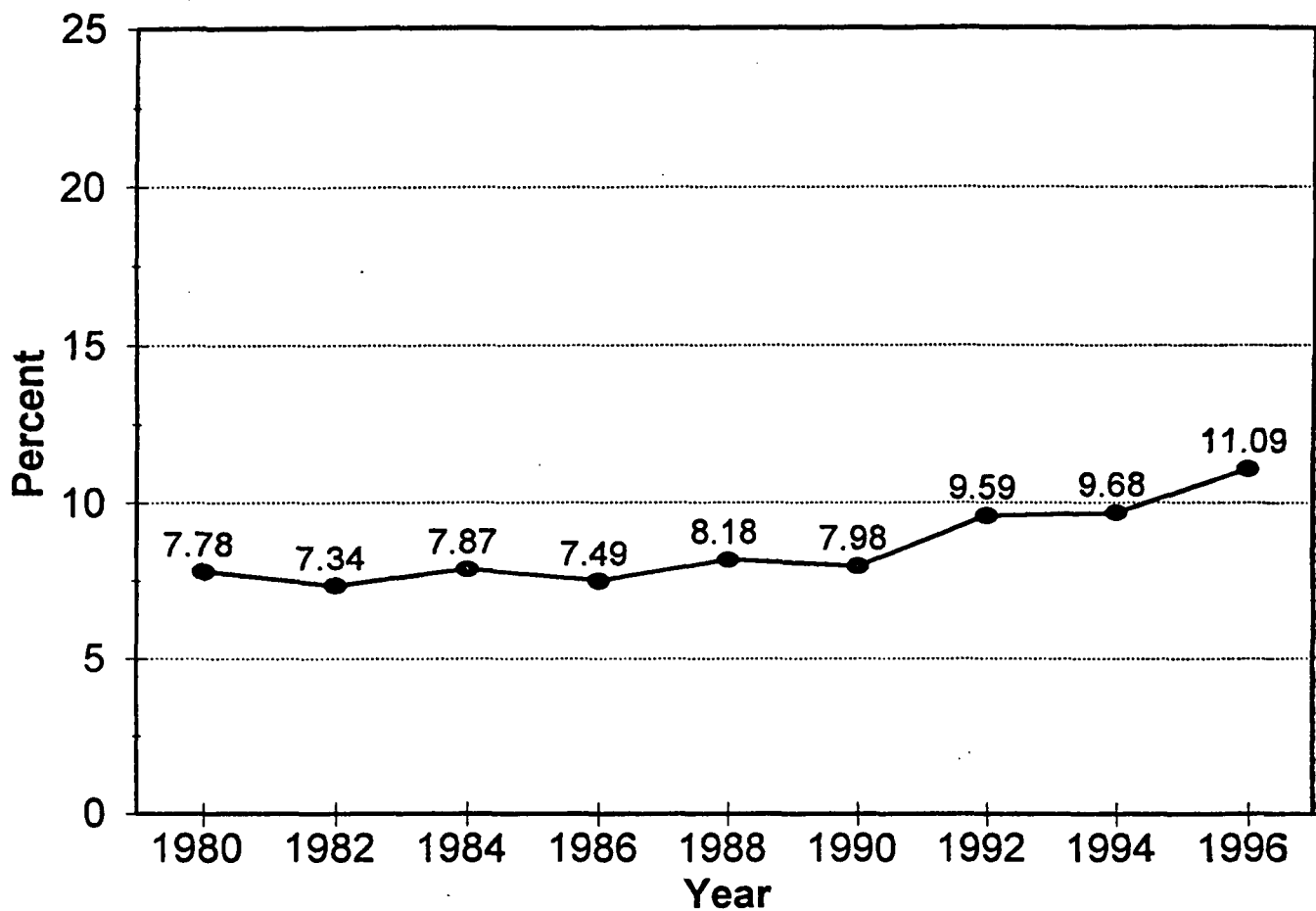


Figure 1

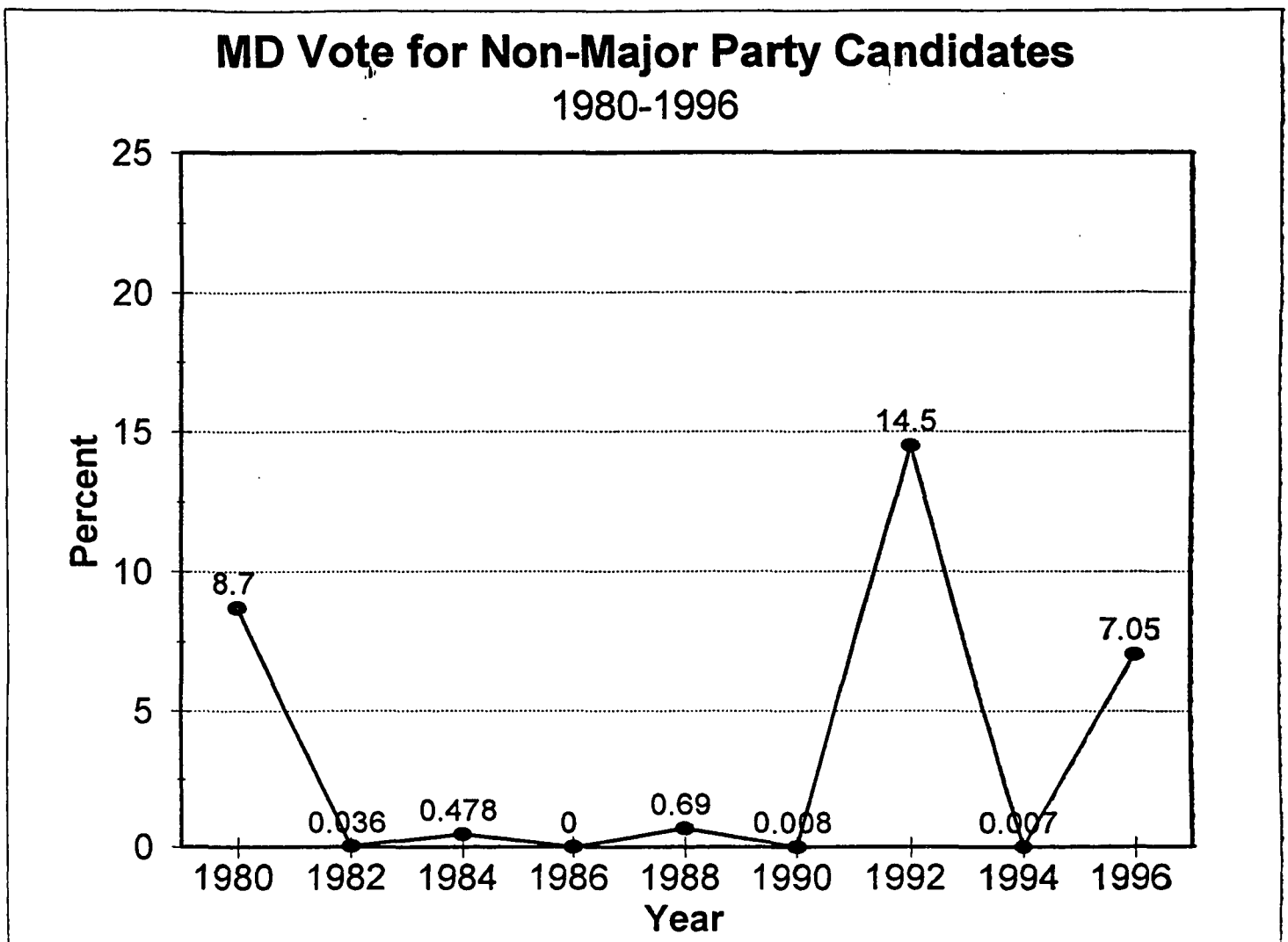


Figure 2

### Non-Major Party Voting in the Mid-Atlantic States, 1980, 1992, 1996

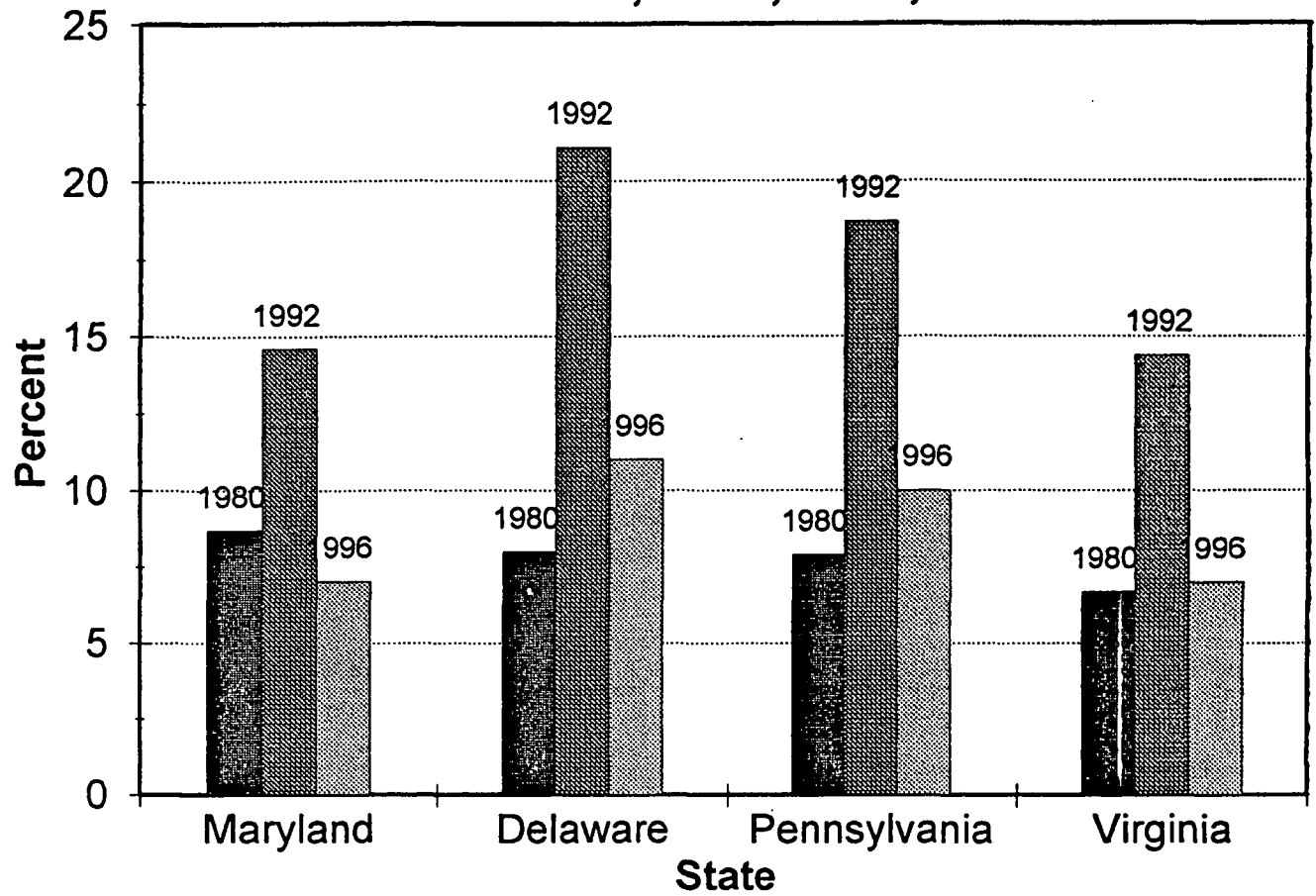


Figure 3

TESTIMONY OF JAMIN B. RASKIN,  
PROFESSOR OF LAW AND ASSOCIATE DEAN, WASHINGTON COLLEGE OF LAW  
ON BEHALF OF MARYLANDERS FOR DEMOCRACY  
BEFORE THE COMMISSION TO REVISE THE ELECTION CODE

NOVEMBER 8, 1996

Thank you for this opportunity to testify.

It is important first to spell out the constitutional values that should inform your deliberations. I believe that these values are 1) political diversity and party competition, 2) government neutrality as between political parties and 3) ballot integrity and clarity.

**\*\* Political diversity is a core First Amendment value repeatedly recognized by the United States Supreme Court, and minor parties have the right to operate free of electoral restrictions that disproportionately hinder their growth. Norman v. Reed, 502 U.S. 279 (1992); Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214 (1989). In American democracy, under the First Amendment, citizens and factions must be given unlimited rein to form their views and promote their ideas. The insidious and non-constitutional idea of a quasi-legal "two-party system" is completely antithetical to the idea of political freedom. As Chief Justice Warren once put it, "All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned." Sweezy v. New Hampshire, 354 U.S. 234, 251 (1957).**

Closely related to the ideal of political diversity is the value of meaningful party competition. Think of Maryland's electoral process as a market in ideas and programs. In order for this market to work efficiently, we need to make sure that political parties do not form self-entrenching monopolies or duopolies which squeeze out effective competition by newcomers. Thus, we have to ensure that currently successful parties do not exploit their state power by erecting high statutory barriers to entry that stop the free circulation of ideas and restrict meaningful competition. If you cut off the channels of effective competition, the incumbent parties grow increasingly arrogant and out-of-touch while the new parties, which may have very important and productive things to say, simply wither on the vine. Frustration, apathy and disenchantment grow; voter turn-out declines. We must remember that competition between parties is not something to be afraid of, but rather something to be celebrated and encouraged.

**\*\* The second main value is that of government neutrality between political parties, a principle critical both for the effective protection of political diversity and competition but also for the symbolic message sent to the public. When the government favors certain political parties and writes them into the law, it not only distorts the market in political ideas but sends a message of false superiority to those parties and a false and demoralizing message of second-class citizenship to disfavored parties. As the Court put it in Anderson v. Celebrezze, the First**

Amendment requires that government legislate "generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process." 460 U.S. 780, 788 n.9 (1983). In that case, the Court struck down overly restrictive ballot requirements that negatively affected third parties. At any rate, this principle of official neutrality pervades constitutional law, and we saw it as recently as last Supreme Court Term in *Evans v. Romer*, where the Court struck down the rigging of the political system in such a way that gays and lesbians could not receive equal rights (May 20, 1996).

**\*\* Finally, we have to pay attention to the value of ballot integrity and clarity. The integrity of the ballot is secured when its final composition and layout reflects a process that embodies the values of political diversity, party competition and governmental neutrality. If these values are overridden in the process and, say, only one or two candidates appear on the ballot, then that ballot fundamentally lacks integrity. We might say that the ballot is artificially small or "undercrowded," such that the public lacks real choice and significant views are being silenced.**

But there is also a value in ballot clarity, making certain that voters can read and understand their ballot choices and vote without fear of making a mistake. This is a real *practical* goal that, unfortunately, often becomes an alibi for destroying all of the even more important *constitutional* values at stake. It is often said that we must ignore the values of political diversity, party competition and official neutrality simply to prevent the ballot from becoming "overcrowded." And, yet, when I voted on Tuesday, I faced five or six different presidential and vice-presidential candidacies on the ballot and I was not at all confused, and I cannot imagine how anyone else could have been either. It is thus important not to overstate this concern. Or, putting it differently, if we believe that there is a certain number of candidacies beyond which the ballot gets too cluttered and the voters confused--say six or seven candidates for a particular office--then let us name that number, announce it as the confusion threshold, and simply allow candidates to get on the ballot up to that point much more easily in a first come-first serve fashion. What we should not allow to happen is to have entrenched parties manipulate a generalized fear of "overcrowded ballots" to destroy every other value in the process and give us naked and barren ballots with no real choices.

Once you have identified the values at stake, your task, it seems to me, is a straightforward, although time-consuming, one. You should read through our election laws with these principles in mind and revise them accordingly. I have taken a quick stab at it myself, and want to offer you my future services--and, more importantly, those of my law student research assistants--to help in the task, but generally I would say that there are two categories of problematic rules that need attention.

The first category is laws that on their face discriminate on the basis of political party, either by name or by the designation of a party as "majority," "minority" or "new." The discrimination begins with Section 1A-1(a) of Article 33, concerning the State Administrative Board of Election Laws, which states that, "Of the five members appointed to the Board three shall be of the majority party and two shall be of the minority party." Are Maryland citizens who are members of other parties or Independents presumptively unqualified for such service? Do they not have pressing interests in matters that come before the Board? I recommend that you

change this sentence to read: "Of the five members appointed to the Board, no more than two shall be from the same party and no more than two shall be registered Independents." This way, we will have at least one citizen who is an Independent or a member of a different party. Today, Democrats and Republicans have 100% of the seats on the Board, which leaves hundreds of thousands of citizens effectively unrepresented on this most critical body.

Consider another case of explicit discrimination. Under Section 2-7 of Article 33, the only Maryland citizens made eligible for appointment as election judges are members of the "majority" or "principal minority" parties--that is, the Democrats and Republicans. Although the origins of this rule may be innocent enough, there is no rational justification for it, much less the more compelling rationale that would be called for in court since it is a kind of viewpoint-based political discrimination against citizens who choose not to affiliate with the Democrats or Republicans.

What is the rationale for this exclusionary rule? Is the theory that Independents or citizens registered with other parties are not honest enough to be election judges? Or is it that these citizens do not need to have vigilant representatives safeguarding the integrity of elections? Neither of these rationales is supportable. You should change this provision to allow all citizens who are registered voters to be eligible to be judges, or at the very least any citizen who belongs to parties or Independent campaigns which have statewide candidates on the ballot or candidates in the given district.

Another explicitly discriminatory provision allows for, indeed requires, state-run and state-subsidized primaries for the Democrats and Republicans but forbids them to other parties. While the minor parties cannot have primaries no matter how many candidates are running for nomination to a given public office, the Democratic and Republican primaries occur whether or not there is actual competition for particular offices and also enable party members to select party central committee members on a public ballot. These party primaries thus provide tremendous differential advantages to the Democrats and Republicans by bringing their candidates to the attention of the public first, allowing for much wider public participation than the conventions required for the other parties, and again conferring a kind of extra imprimatur of state approval on the quasi-official parties. Should members of minor parties really be forced to pay for major party primaries but denied the right to have their own, even when it could be done at almost no extra expense by providing party members the ballots on the exact same day?

Other facially discriminatory provisions permit the Democratic and Republican Central Committees to add candidates to an incomplete slate of primary candidates after the filing deadlines have passed for Independent and third party candidates; and allow the major parties to place candidates on the general election ballot if vacancies occur after the primaries but do not allow other parties to make similar substitutions if their own candidates are unable to run.

The second category of problematic provisions consists of those which *appear* to be neutral on their face but in effect make it next to impossible for new parties to get off the ground. The most important such provision, of course, is the requirement that, even after a third party has met the requirements to qualify as a minor party, its candidates must collect signatures from 3% of registered voters eligible to vote in the relevant election under Section 7-1. This rule gives

Maryland the dubious distinction of being tied with Florida for worst out of the fifty states in terms of democratic access for new parties to compete in the political system. In the Fourth congressional district, where I live, a third-party candidate would have to collect 8,345 signatures in order to qualify, and in the Eighth district, it would be 10,984 signatures. If a Reform Party candidate wants to run for Governor, he or she must collect 77,640 signatures, which requires an almost impossible mobilization of money, energy and time--all while the Democratic and Republican candidates are placed on the ballot automatically and can spend their time actually campaigning and raising money.

What is the conceivable justification for such an onerous requirement in the Free state, especially in an age when public space is scarce, shopping center owners have petition circulators ejected or arrested, and television has become the dominant medium for civic exchange? Again, if the point is to keep ballots simple, let us determine how many candidates we want to allow on the ballot, and then lower the signature requirement to one-half of one percent for the first five or six candidates to collect that many signatures. Then go back to 3% or 25% for everyone else. But if this interest in an aesthetically pleasing ballot is real rather than mere camouflage for partisan exclusion, then let us choose a narrowly tailored means of advancing precisely the interest we have in mind. The Constitution requires no less. Let's not starve our ballots to death in order to prevent them from getting morbidly obese--something, by the way, which appears to be a danger nowhere in Maryland..

There are similar neutral-seeming provisions which have profoundly discriminatory effects. For example, state law forbids citizens to sign petitions for more than one party or one candidate for a particular office. This is a completely gratuitous and discriminatory rule that has absolutely no rational justification. As a Democrat, why shouldn't I be able to sign petitions to allow the Reform Party and the Green Party both to field candidates and participate in the political process? Who is harmed in any way by this decision? The logic of this rule seems to be that a signature allowing a party or candidate to qualify for ballot access is akin to a vote and thus a citizen can sign only once, but of course this is nonsense. All citizens are benefitted by political diversity and competition

Another significant discriminatory practice is found in the requirements for minor parties to maintain their status as qualified parties under state law. A minor party loses its status if the total votes received by all of its candidates for state wide office in a general election (for example, for President, Vice-President, Senator, Governor, Lieutenant Governor, Attorney General and Comptroller) do not constitute 3% of the total votes received by *all* candidates running for those offices combined. This is the case even where the minor party runs only a candidate for one of those offices. Again, this is a completely insensible and indefensible rule that penalizes parties which are not yet able to field excellent candidates for every statewide office. What is the justification?

The representatives here of new parties can describe the chilling effect of all of these rules in much greater detail and with much more passion than I, a mere Democrat whose consciousness has been raised only recently on these issues. But the main point is that you must begin by asking what values you want to promote, and I would urge you to keep in mind that the so-called "two party system" is not a value at all but rather a clear threat to the values of political



diversity and competition, official neutrality and ballot integrity. All of the members of this Commission are Democrats and Republicans, albeit enlightened and very well-respected members of these parties. But, given the all-too-typical exclusion of others from your Commission, there is an added burden on all of you to act not as Democrats or Republicans but rather as Marylanders, representative citizens who believe in the equal rights of every citizen of our great state and want everyone to participate on an equal basis. At every turn, you must ask what the specific justification for a rule is, and ask how it affects not just those of us in majority parties, but those of us who belong to new parties and want them to have an equal shot at public attention and political impact. It is easy to be for free election in theory or in other people's countries, but what about free elections right here at home?

Thank you for your attention.

\* \* \* \* \*



STATEMENT BY PAUL S. HERRNSON,  
PROFESSOR OF GOVERNMENT AND POLITICS,  
UNIVERSITY OF MARYLAND, COLLEGE PARK  
ON POLITICAL PARTIES AND BALLOT ACCESS REFORM  
TO THE COMMISSION TO REVISE THE ELECTION CODE  
NOVEMBER 8, 1996

Mr. Chairman and members of the commission:

I appreciate your invitation to discuss ballot access reform and its implications for political parties, elections, and the governmental process. Although I make no claim to be an expert on the details of Maryland election law, I have devoted over 15 years to studying parties and elections in the United States. I have published three books and dozens of scholarly articles that have bearing on the subject, and I am currently editing a volume on minor-party politics in the United States. Most of my knowledge is concerned with federal elections, however, some of the experiences that have taken place at the federal level and in the other states are applicable to elections in Maryland.

I am in support of maintaining the current institutional preferences that exist for the two major parties, including those related to ballot access. I propose to 1) discuss the impact that ballot access laws have on minor parties, 2) defend the two-party system, which has prospered under current ballot access requirements, and 3) argue that changing ballot access laws will not enhance the most important roles that minor parties and independent candidates play in American politics.

**Ballot Access Laws are Just One of Many Impediments to Minor Parties**

The United States has always had a party system in which two major parties dominate and minor parties and independent candidacies play important but secondary roles. Two sets of major forces contribute to this state of affairs. The institutional forces include federalism, the separation of powers, bicameralism, and single-member simple-plurality (or winner-take-all) elections, participatory nominations processes, campaign finance laws, and ballot access requirements.

The behavioral foundations for the two-party system include the political socialization that most citizens receive, the ideological homogeneity of the electorate (which leaves little room for ultra-liberal or ultra-conservative minor-party and independent candidacies to succeed), and the career paths of politically ambitious individuals--most of whom become involved in one of the two major parties because they are most likely to win. In addition, mainstream politicians, the media, and many voters typically ignore or ridicule minor-party efforts, ushering minor-party and independent candidates to the political sidelines in most elections. Major-party politicians are also quick to co-opt popular issues raised by minor-party and independent politicians, depriving these groups of much of their support. A recent example of this is when both major parties co-opted the deficit reduction issue from Ross Perot's 1992 presidential campaign.

In short, ballot access laws are only one of many hurdles that minor-party and independent politicians must jump if they are to get elected or participate in governance. Anecdotal evidence suggests that states that have less restrictive ballot access laws may have a slightly higher probability of electing minor-party or independent candidates, but this evidence is not strong. Moreover, despite the existence of ballot access restrictions and other impediments to minor parties in the United States our nation has witnessed the birth of as many (and some assert more) minor parties than Western European democracies. The major difference is that European minor parties are more likely to endure and to participate in governance than are their minor-party counterparts in the U.S.

The success of European minor parties and the failure of their American counterparts is not the result of differences in ballot access laws. Rather, it is a product of all of the institutional and behavior foundations mentioned above and of the differences in the types of minor parties that sprout up in the contemporary U.S. and Europe. Modern American minor-parties differ from their 20th century predecessors and European counterparts in that they are candidate-centered rather than party-focused. "A Connecticut Party," which elected Lowell Weicker governor in 1990 and then all but disappeared from Connecticut politics is a fairly typical example of a successful minor party in the contemporary U.S.

The Reform party is a more widely recognized example. Although some limited attempts were made to hold a contested nomination and create some kind of organization in 1996, the party remained a creature of Ross Perot. His money paid for the party's convention, which was in many ways rigged to ensure his nomination. The party fielded very few candidates for lower levels of office, and they ran largely independent of one another. Moreover, few, if any, received strong backing or an endorsement from Perot. The Reform party was held to 8 percent of the popular vote in the 1996 presidential election and will probably all but disappear after the presidential contest in 2000.

### **Reasons to Support the Existing Two Party System as Opposed to Promoting Minor-Party or Independent Candidacies**

Given their tendency to come and go, one could ask the question: Should we loosen ballot access restrictions or do anything to else to enhance the prospects of minor-party or independent candidacies? One's answer to this question largely depends on whether one believes that elections should be primarily about giving voters the widest possible range of choice OR elections should be primarily about promoting political legitimacy, political accountability, and effective and moderate governance. There are important tradeoffs between these goals. I lean toward the latter and offer the following arguments to support this position.

**Political Legitimacy**--Under a strict two-party system, only the two major parties' candidates are listed on the ballot. This ensures that the winning candidate receives a majority of the vote and has a strong mandate to govern. Under a modified two-party system, like ours, the names of the two major-party candidates and a small number of minor-party and independent candidates appear on the ballot. In some cases the winner of an election receives a plurality rather than a majority of the vote. Given that this official was elected by less than of a majority of all voters, he or she does not have a majoritarian claim to representation and possesses a weaker mandate to govern than a candidate who wins a majority of the vote.

In a party system where access to the ballot is relatively open, the likelihood of several candidates splitting the vote and the winner getting elected with a small plurality increases substantially. An official who wins with a small portion of the vote (e.g. 25, 30, or 35 percent) has difficulty claiming that he or she represents the views of most voters, and thus has a weak mandate to govern. Moreover, one can think of examples, such as the 1980 election for U.S. Senate in New York, where a candidate who was not the preferred choice of most voters won the election because the first choice and some other contestant divided the majority of the vote.

**Political Accountability**--The two-party system enables voters to make rational choices because it simplifies the decision making involved in elections. First, when the names of candidates who belong to the two major parties appear on the ballot, most voters have a general idea of what these candidates will do if elected because their parties have recognizable positions on most issues. Making it easier for additional candidates to

be listed on the ballot would complicate the picture for voters who are casting votes on what already one of the longest and most complicated ballots used in a modern democracy.

Second, the two-party system simplifies choices for voters who do not even know the candidates' or parties' traditional issues positions--and many of these voters exist. When voters approve of the directions that their government is taking and are satisfied with the affairs of their state or nation, they can reward those who belong to the party in power by voting for its candidates. When voters are dissatisfied with the performance of government or current conditions, they can punish those in power by voting for candidates who belong to the opposing party. Placing the names of additional candidates on the ballot causes this system of political accountability to break down because it encourages voters who are not satisfied with the performance of government to divide their votes among many parties. This heightens the probability that the in-party will remain in power because those who were dissatisfied with its performance may divide their votes among two or more out-parties.

Effective Governance--Given that the constitutional design of the American political system decentralizes power (because of federalism, the separation of powers, etc.), it is already difficult for the two major parties to bridge the institutions of government in order to make public policy. As such, political gridlock sometimes results. Encouraging the development of more parties holds the promise of creating additional fragmentation. Should these parties manage to capture a few seats in a legislature they will undoubtedly introduce greater division into government, thereby increasing the incidence of gridlock.

Moderate Governance--The current two-party system plays a role in nurturing consensus. Major-party contestants seek to unite a broad range of voters rather than to capture the votes of narrow interests. Minor-party and independent candidates, on the other hand, often campaign on one or two issues or seek to unite a small number of specific constituencies, thereby further dividing rather than uniting the population. In today's highly charged atmosphere of heightened ideological rhetoric, talk radio shows, and hyper-mobilized interest groups it is unwise to reduce ballot access requirements or take other measures that would encourage more individuals who seek to mobilize narrow constituencies or interests to run for office.

Fairness--Under the current system major-party candidates, and minor-party candidates whose party received 3 percent of the vote in previous election, are guaranteed a place on the general election ballot. New parties and independent candidates must collect the signatures of registered voters in order to enjoy that same privilege. Some might claim that this is unfair to new parties and independent candidates. I would remind those who hold this view that major-party (and some minor-party) candidates must compete with each other for the resources and votes needed to win their parties nomination, and only then do they secure their place on the general election ballot. In other words, major-party candidates do not automatically receive a position on the ballot. They must earn it.

### **The Roles of Minor Parties and Independent Candidacies in American Elections**

Minor parties and independent candidacies perform four important functions in the American political system: 1) they raise issues that have been ignored by the two major parties; 2) they serve as vehicles for voters to express their discontent with the two major parties or their nominees; 3) they help propel the nation from one policy-making era to another; 4) they occasionally act as laboratories for political innovation. Minor parties and independent candidates will continue to perform these functions regardless of whether they have easier access to the ballot.

## **Recommendation**

I strongly recommend that the State of Maryland maintain its current ballot access requirements. The current system gives voters a reasonable range of choice, while providing the foundation for elections that promote political legitimacy, political accountability, and effective and moderate governance. The current system is also fair: it does not make unreasonable demands on minor-party or independent candidates who wish to have their names placed on the general election ballot, and it does not make unreasonable demands on parties that wish to use the primary elections to nominate their candidates.

Should members of the Commission to Revise the Election Code wish to experiment with lower ballot access requirements, I would advise that they recommend that the State proceed incrementally and with caution. I am aware of some options and would be pleased to discuss them with you.

Thank you very much. I invite your questions.

My name is Barbara Robson.

First, may I make clear, that I am not here today to embarrass, antagonize or criticize any one of you. I am very appreciative of your contribution to this issue of Maryland election law and would like to thank you for inviting me to participate in your process.

Due to the short time period allotted for my testimony, it is my hope that you will seek my opinion and ask questions of me or any others who have been personally affected by these ballot access laws during the next several months. I have included my telephone number at the bottom of your copy of this testimony.

I would like to ask how many of you have ever run for state or federal office, in Maryland, as a third party candidate?

How many of you have gathered signatures for a third party?

I am here to testify today to ensure that this commission hears a third party candidate's perspective.

I ran as a Natural Law Party candidate this election for US Congress, in the 8<sup>th</sup> district.

I feel that you should know what it is like to be in my shoes.

First, here are some facts about what I had to accomplish.

Maryland state law required that I collect over 10,000 valid signatures of registered voters from my district in order for my name to be on the ballot. What this meant, in practical terms, was that I needed to collect 18,000 signatures ( due to invalidity rates). For this reason, I started my petitioning campaign in November of 1995. Whether this number sounds daunting to you or not, it's only one of several difficult aspects, that I encountered.

You might anticipate, if you thought about it, some of the difficulties connected with petitioning: people worried about what they are signing, or not wanting to endorse a party other than their own (although you take the time to explain to them that they are

not endorsing anything, by signing the petition), or people being frightened by strangers approaching them (due to the current epidemic of violence & crime), or resistance to giving their name & address for fear of robbery. In general, people do not like petitioners and will try to avoid them. Petitioning is unpleasant for both the petitioner and the person being approached. I question the use of petitioning to show a party's popular public support, for these reasons.

Putting this aside, however, what was most unexpected was the scarcity of legal places to petition in my district, which is Montgomery county, except most of Silver Spring. To collect this massive number of signatures, you have to be able to access large groups of people, or places with a large, steady, unhurried flow of people. Due to the change in American lifestyle, people no longer congregate in public town squares, but rather in malls, grocery stores, and movie theaters. These places, although licensed by state and local government, and open to the public, are all on private properties. Even public park events prohibit petitioning, when they are owned or run by private organizations, which is more times than not. While in many states these places are considered legal places to collect signatures, I had to spend most of my time fighting management and researching laws regarding petitioning rights. According to the Maryland State Attorney General's Office, I did not have the right to petition in any of these places where the public congregates. I decided that I didn't have the time nor money to challenge this. Additionally, in some cases, although I had been assured that I had the right to petition, I was routinely escorted out by security guards. In some cases I even found local, state and county police in disagreement about the legality of my petitioning. The only place I found, in terms of access to large numbers, was Metro stops, during rush hours, however, as you can probably imagine, our experience was that people were in a rush and resented you trying to stop them.



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Natural Law Party candidate for US Congress  
District 8, Maryland - 1996 election

After all this, I realized that I was not going to be able to accomplish this by myself, even with the help of party volunteers, so I researched petition companies and (in February) hired the one that had the best success rate here in Maryland. All is not what it seems like on the surface here as well. The company ran into problems with locations and maintaining petitioners and left me with no signatures and minus \$4000 in mid June. I've been a business owner most of my adult life, it's not that I am naïve. I discovered that this was just another unexpected twist in the process; that you can't even rely on paying people to get the job done.

I still did not give up and tried again to fulfill the state requirement and managed to collect over 3000 signatures.

I would like to point out something you may or may not realize, that this number of signatures would have put me on the ballot in all but a very few states. For example, a colleague of mine ran in this election for the same office, US Congress, for the same party, the Natural Law Party, in Northern Virginia, and was on the ballot, having collected 1500 signatures. Because she was on the ballot, she was invited to participate in more than 30 debates, was accorded equal access to the media as the major two parties and ultimately received nearly 10 % of the vote; showing significant public popularity. In contrast, due to the prohibitive ballot access laws of Maryland, I was not on the ballot, even though I had collected double the number of signatures. I was not included in any debates, got little media attention because I was not on the ballot and received less than 1 % of the vote. Yet we both ran on the same platform. Do you honestly think that Northern Virginia and Montgomery County, Maryland voters are that different? Less you think that Virginia is lenient, NJ requires only 100 signatures to get on the ballot for the same office.

Let's step back for a moment and consider what third parties have contributed to American life. Many of the major advances in our

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Natural Law Party candidate for US Congress  
District 8, Maryland - 1996 election

country came about from the efforts of third parties, such as: women's suffrage, anti-slavery laws, our anti-monopoly laws, and many of our labor laws. The Natural Law Party stands for field tested common sense innovative solutions to our nation's problems, in the areas of health care, education, crime and drug-abuse. These are the issues that Americans are concerned about. Is this popular? It is popular enough that just this week, Peter Jennings, of ABC news, announced the beginning of a series of reports called "Solutions: reporting innovative solutions that work".

If you stifle the chance for the discussion and open debate of new ideas, by overly prohibitive ballot access laws, you stagnate democracy. I suggest this is why we are seeing such low voter turn-out.

I can't tell you how many people I ran into on the streets, while petitioning, that told me they were no longer going to vote, because they felt that their vote didn't count and that they didn't feel confident that either major party had solutions to our nation's problems.

It's a sad day that we have arrived at here in Maryland, when dedicated, committed individuals who are trying to contribute something positive to their society are treated in such a humiliating and unfair way. The playing field is not level when third party candidates are forced to spend 80 % or more of their time and financial resources ( which are scarce to begin with) completely focused on getting their name on the ballot, immensely reducing the time they have to really campaign.

I also found that most Marylanders were totally unaware of the existence of ballot access laws and were appalled at how restrictive Maryland was compared to other states.

Many Marylanders have been working hard to change this, with a good deal of progress. You are probably familiar with the legislative history. Two years ago the bill was narrowly defeated

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Natural Law Party candidate for US Congress  
District 8, Maryland - 1996 election

in the Senate, last year it passed in the Senate but was narrowly defeated on the House floor. However, I want to share with you a story. Shortly after the initial Senate defeat, a radio reporter put together a panel to discuss the Senate's vote. Interestingly enough, the reporter could not get one Senator who had voted against the bill to publicly defend their position. They knew that their position would never stand the light of day.

Let me summarize my experience by making some recommendations. First, Maryland should at least be more consistent with other states, such as Virginia; and require  $\frac{1}{2}$  of 1% - approximately 1500 signatures of registered voters. This requirement is still difficult to achieve. Or alternatively, if a party has become recognized by the state, by collecting 10,000 signatures statewide, all candidates of that party should receive ballot access.

Secondly, Maryland should join other states which allow bona fide candidates for political office to collect signatures in publicly licensed locations.

There are many more aspects of this process to address, and I can not attempt to cover them all here today in these ten minutes. I again voice my desire to be included in your process.

There is no representation of any third party member on your commission. I would like to see this adjusted, to ensure clear and open communication and a holistic perspective of the issues surrounding ballot access in Maryland.

You have the opportunity to restore fairness and openness to Maryland's political process. It is my hope that you will.



**Henry C. Marshall  
5027 Ten Oaks Road  
Clarksville, MD 21029-1015  
Phone: 410-531-5454  
Fax: 410-531-3140**

**January 23, 1997**

**Mrs. Marie M. Garber, Chairman  
Commission to Revise the Election Code  
Department of Legislative Reference  
90 State Circle  
Annapolis, Maryland 21401-1991**

**Dear Mrs. Garber:**

**Regarding your letter of 1/9/97 to State Election Officials, etc. which I received, it would be appreciated if your committee would consider the following:**

**In reference to Title 2 - Powers and Duties of the State and Local Boards, Sub Title 1 - State Board dated 10/29/96, it may appear that there is not an exact and clear line of authority between the State Board and a Constitutional Officer for the implementation and administration of the National Voter Registration Act of 1993 (NVRA).**

**Considering that the U.S. Constitution delegates to the State the election function, it naturally follows that this function should be the final responsibility of a State Constitutional Officer (appointed or elected).**

**Therefore, we suggest that the following be considered:**

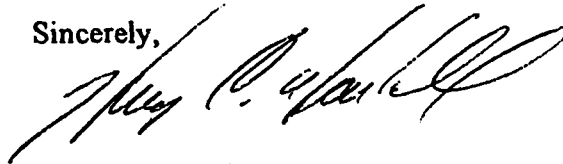
- 1. That the entire Maryland State Election function be assigned to a State Constitutional Officer. This officer would also be the Chief State Election Officer for compliance with NVRA and the assumed federal civil liability and not a civil servant as it is currently proposed. In the vast majority of states, this constitutional officer is the Secretary of State or could be the Lt. Governor (Elected or appointed).**
- 2. The State Board and Chairman reports directly to the Secretary of State. The Board will establish overall state-wide election policy in the interest of efficiency and uniformity. Election policy will be established by the Board and not the Attorney General's Office as is the current practice. The Board will employ its' own independent counsel, and not the office of the Attorney General.**

3. The Board will employ a professional administrator who will have direct control, through the State Board of all election policy, local board and state personnel. This employee would be, administratively only, responsible for the implementation and administration of NVRA and compliance with Maryland State Election Law.

In reference to the Federal Election Commission Directory - Spring 1996, Section 1 National and State Election Officials, it would appear that the State Election function comes under the jurisdiction of the Secretary of State in 40 out of 50 states (80.0%), Lt. Governor - 2 (4.0%) and others - 8 (16.0%).

Considering the complex problem of address accuracy coupled with the fact that the Department of Motor Vehicles has extensive computer experience, one state that we know of, has directed that the two responsible cabinet officers, Secretary of State (Elections) and Secretary of Transportation (DMV) establish a corporative relationship regarding computer programs to solve the address accuracy problem thus saving the state millions of dollars.

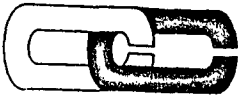
Sincerely,



Henry C. Marshall  
Voter

P.S. Under NVRA, it is estimated that the voter rolls in the state will increase over the next four years from 2.5 million to 3.4 million or 36.0%. New registrations are currently up 57.2% in 1996 vs. 1995.

cc: Mr. John Willis, Secretary of State  
Members of the Election Commission  
Mrs. Helen L. Koss, Chair, SABEL  
Mrs. Michelle Dyson, SABEL  
Mrs. Linda Pierson, SABEL  
Mr. Wm. Somerville, Executive Director, Election Commission



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cause**

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**Ex-Officio Members**  
Peter Brown  
-Hyattsville

**TO:** The Commission to Revise the Election Code  
**FROM:** Deborah Povich, Executive Director  
**RE:** Titles 13 and 15  
**DATE:** October 8, 1997

Common Cause/Maryland applauds the Commission's diligence and thoroughness in reviewing the election code. While we recognize the Commission chose not to make any substantive changes in the campaign finance sections, we would like to recommend some technical changes to assure that the rules and regulations regarding the funding of candidates is applied consistently and fairly.

**Audit Authority**

During a 1996 audit, SABEL became aware that they lacked statutory authority to audit the campaign finance records for non-candidate accounts. Common Cause/Maryland strongly supports giving SABEL the authority to audit all campaign finance accounts. No logical public purpose is served by permitting the auditing of some accounts and not others. The current draft language provides SABEL this authority (Title 2-102 (B)(5)).

**Attribution of Contributions**

In 1991, the contribution limits were changed from per election limits to limits for a four-year election cycle. Efforts were made to prevent businesses from circumventing these limits by assuring that corporations and their wholly-owned subsidiaries, and two or more corporations owned by the same stockholders, are treated as one entity for contribution purposes. Because the language is specific as to corporations, other business entities such as partnerships, limited liability companies and real estate investment trusts are able to circumvent the limits by donating through multiple business entities owned by the same people. Common Cause/Maryland recommends that Title 13-212 (B) be amended to include other business entities. HB 814 (1997) contains language that would address the problem of treating some business entities differently than others.

(Over)

### The Fair Campaign Financing Act

At the October 6 meeting, there was a brief discussion about changing the title of Title 15 from The Fair Campaign Financing Act to The Public Funding Act. After some deliberation, we request the Commission not change the name of this Title. No real purpose is served by a title change, and the title as stated reflects the name of the fund into which voluntary contributions are deposited. If there is a desire to call Title 15 "Public Funding", then we request that you change Title 13 to "Private Funding."

As with much law, there exists a rich history of efforts by individuals and organizations to change what they believe to be a flawed system. The title Fair Campaign Financing Fund accurately reflects the intentions of those who first worked in the 1970's (and again in the 1990's) to establish an alternative financing system funded "by the people and for the people." (See purpose statement) The word "fair" means "equitable." The question was raised as to whether or not Title 13 was therefore by implication "unfair." In fact campaign funding as outlined under Title 13 is a system that disproportionately benefits wealthy and incumbent candidates. Some might consider that "unfair." We do not suggest changing Title 13 to The Unfair Campaign Financing System, but do request that the name of Title 15 be left unchanged. This is a part of law that was recently approved (1995) by a unanimous vote of the General Assembly. It is neither archaic, antiquated, nor duplicative and needs no revision. In fact it may be a system that is advanced for its time. Please allow time to tell.



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410-254-8806

NOVEMBER 12, 1997

The Honorable Marie M. Garber, Chairman  
c/o William G. Somerville  
Commission to Revise the Election Code  
State Department of Legislative Reference  
90 State Circle, Room 116  
Annapolis, MD 21401-1991

Dear Ms. Garber:

Thank you for the opportunity on November 12th to present four proposals regarding election laws that affect third party and independent candidates in Maryland. If adopted these proposals would help mitigate the unjust requirements of present Maryland law and better respect the fundamental human right of Marylanders to free and fair elections. Below is a summary of these proposals. I hope that they can be incorporated into the main bill and separate legislation that emerges from your Commission.

Proposal I - Allow voters to sign more than one party formation petition.

This proposal can be implemented by deleting the language in Section 4B-1(c) that prohibits a person from signing more than one party formation petition. The present language is:

"No person shall sign more than one petition for the formation of a new political party between each general election in the State; nor shall any person sign more than once on any petition for the formation of a new political party."

After the deletion, the remaining part of 4B-1(c) then could be:

"A person may not sign more than once on the same petition for the formation of a new political party."

William Plies letter to Chairman Garber, page 2, November 12, 1997.

Proposal II - (a)Require the local boards to record any reason why a signature on a candidate or party formation petition is found to be invalid , (b) require the local boards promptly to provide that information, upon request, to the affected candidate/party, and (c) require the local boards to provide a procedure for the prompt resolution of disputes if the candidate/party believes any signature has been improperly invalidated.

This proposal can be implemented by adding the necessary language to Sections 4B-1(d) and 7-1(g).

Proposal III - Allow voters to remain registered with a partisan organization that previously had party status. Without additional action on the part of the voter, allow these voters to remain affiliated with the partisan organization if the organization regains party status.

Proposal IV - Allow a partisan organization to retain party status by getting votes for its candidates equal to one percent of the total votes cast for Governor or President in the general election.

For example, assume the total vote for Governor is 1.5 million votes. If a new party has six candidates for State Senator and each of these candidates gets three thousand votes, then eighteen thousand votes have been cast for candidates of this new party. In this example eighteen thousand votes is equivalent to 1.2% of the number of votes cast for Governor. The new party could use this alternative method to demonstrate party support without having to field a candidate for the highest office before they are mature enough to compete effectively at the statewide level.

Sincerely,

William Plies, Esq.



# National Federation of the Blind of Maryland

Sharon Maneki, President

## MEMORANDUM

DATE: November 12, 1997

FROM: National Federation of the Blind

TO: Commission to Revise the Election Code

SUBJECT: Accessibility for Disabled Voters

The National Federation of the Blind of Maryland is pleased to have the opportunity to testify on the Commission's proposed recommendations for accessibility for disabled voters at this public hearing.

First, we commend the Commission for recommending the removal of the signed affidavits as a condition for receiving the assistance of election judges when casting ballots. Although it is not specifically stated, this recommendation applies primarily to blind and visually impaired voters. We also commend you for including "accessibility for disabled voters" as a consideration for certifying new voting systems.

Second, we regret the Commission's decision against our recommendation of July 23, 1997, for specifically including non-visual access as a consideration for the certification of voting systems. We take this opportunity to ask you to reconsider your decision on this matter. We reiterate that, all too often, unless non-visual access is specified it is overlooked.

For this public hearing we are submitting Resolution 97-01, unanimously adopted at the 1997 convention of the National Federation of the Blind of Maryland. We are also resubmitting our letter dated July 23, 1997, to Chairman Garber. In these documents we present the reasons and arguments for the specific inclusion of non-visual access in your recommendation.

Please review our arguments and take the time to rewrite proposed recommendation Title 9, Voting, Subtitle 1. Voting Systems (D) Considerations for Certification, number (10), as we are recommending.



# **National Federation of the Blind of Maryland**

**Sharon Maneki, President**

## **RESOLUTION 97 - 01**

**WHEREAS, the Commission to Revise the Election Code was established to review and modernize Maryland's election laws, and will submit its recommendations to the Maryland General Assembly in December 1997; and**

**WHEREAS, proposed recommendation Title 9, Voting, Subtitle 1. Voting Systems (D) Considerations for Certification, number (10) states that a consideration in the certification of new voting systems shall be "accessibility for disabled voters"; and**

**WHEREAS, the term, "accessibility" usually refers to "physical access" and not necessarily to non-visual access; and**

**WHEREAS, despite the recommendations of the National Federation of the Blind of Maryland, this Commission has decided against the specific inclusion of non-visual access in its recommendations to the Maryland General Assembly; and**

**WHEREAS, the failure to include non-visual access in the definition of "accessibility for disabled voters" will be detrimental to the full inclusion of blind and visually impaired persons in the voting process; and**

**WHEREAS, adaptive technology that can provide non-visual access to voting systems is becoming more readily available: Now Therefore,**

**BE IT RESOLVED by the members of the National Federation of the Blind of Maryland in convention assembled this twenty-fourth day of October 1997 in the city of Hagerstown, Maryland that this organization strongly urge the Commission to state explicitly that the term "accessibility" includes non-visual access.**



# National Federation of the Blind of Maryland

Sharon Maneki, President

July 23, 1997

Marie M. Garber, Chairman  
Commission to Revise Election Code  
Department of Legislative Reference  
Maryland General Assembly  
90 State Circle  
Annapolis, MD 21401

Dear Ms. Garber,

I heartily commend you and the members of the Commission to Revise Election Code for your accessibility recommendation, as reported in the minutes for July 9. Your recommendation that the State Board of Elections consider access and use by disabled persons when certifying voting systems should greatly enhance the voting process for disabled citizens.

However, the National Federation of the Blind of Maryland wishes to offer an additional recommendation. The term "access" should be specifically defined to include "access by non-visual means."

The term "access" by itself is too vague. The specific inclusion of "non-visual means" will clarify and strengthen the State of Maryland's commitment to the total inclusion of all citizens in the voting process. To often, the term "access" is limited only to "physical access," (i. e., the placement of levers and other devices used to cast a ballot, the size of the voting booth to accommodate wheelchairs, etc.). Considerations and requirements for non-visual means of voting are always overlooked. The addition of specific references to non-visual means will eliminate the misunderstandings and difficulties that visually impaired persons have encountered when voting.

It is essential to understand that methods for "access" will remain in a state of flux. Upcoming technologies will continue to enhance and redefine access by non-visual means. These technologies will not only assist blind or visually impaired voters, but also could assist senior citizens, those with literacy problems, and many others in the general public.

Thank you for considering our recommendation.

Sincerely,

Sharon Maneki

cc: William Summerville



**Chairman**  
I. Dean Ahmad, Ph.D.

**Secretary General**  
Scott Becker

**Coalition Members**

American Civil  
Liberties Union,  
Maryland Chapter

Baltimore City Wide  
Coalition

East Bethesda Citizens  
Association

Gray Panthers of Prince  
Georges County

Greenbelt Greens

Hispanic Academic  
Achievement, Inc.

Maryland Initiative and  
Fair Ballot Access  
Committee

Maryland Libertarian  
Party

Maryland Natural Law  
Party

Maryland New Party

Maryland Reform Party

Maryland Socialist  
Party

Maryland Taxpayers  
Party

Maryland United for  
Peace and Justice

Marylanders for  
Democracy

Montgomery County  
Civic Federation

MaryPIRG—Maryland  
Public Interest  
Research Group

Prince Georges County  
Civic Federation

Prince Georges' Peace  
and Justice Caucus

Small Business Trade  
Association

# **Coalition for a Democratic Maryland**

4323 Rosedale Avenue, Bethesda, MD 20814 – (301) 951-0539

1997 Nov. 13

To: William Sommerville  
Commission on Election Reform

From: I. Dean Ahmad, Ph.D., Chairman

Re: LR 0633

This is the text of my written testimony in support of the comments I made to the Commission on Nov. 12, 1997.

On behalf of our coalition of the twenty organizations named at the left (civic associations, civil liberty groups, and various political parties), I thank the commission for its thoughtful work and especially for its willingness to respond to the concerns that ballot access in Maryland be fair and open. We especially support the commission's proposal to reduce the petition requirement for independent candidates to 1% of the registered voters and for providing an optional mechanism by which candidates of minor parties may have their names placed on the ballot. The reduction of the petitioning requirement is the issue around which our extremely diverse coalition was founded. Last year, a bill to achieve this failed by a single vote. This issue is so important, that we ask the commission to consider supporting it as a separate matter from LR 0633, on its own merits.

We herewith propose several technical corrections, and draw your attention to two other substantive concerns:

First, we believe that section 4-103(2)(I) is in error and should be corrected as indicated (underlined words added and bracketed material deleted):

- (I) A CANDIDATE AFFILIATED WITH THE POLITICAL PARTY IS ON THE GENERAL ELECTION BALLOTS FOR PRESIDENT OR [and] GOVERNOR AND RECEIVES AT LEAST 1 PERCENT OF THE VOTE[s in those elections] FOR THAT OFFICE; OR

Section 4-103(3)(II) is unclear. We believe the intention is better served by revising the text as follows:

- (II) A PARTISAN ORGANIZATION THAT RETAINS ITS STATUS AS A POLITICAL PARTY BASED ON VOTER REGISTRATION IN ACCORDANCE WITH PARAGRAPH (2)(II) OF THIS SUBSECTION SHALL [continue its status for one year] LOSE ITS STATUS IF ITS REGISTRATION FALLS BELOW 1 PERCENT ON DECEMBER 31 OF TWO SUCCESSIVE YEARS.

We do not see where the requirement that a party must have a registration of 1% in order for its candidates to have their name on the ballot appears in the proposal. We would like to see that requirement dropped (and we think it is unnecessary since you have instituted a 1% petitioning requirement). We ask that you drop the 1% registration requirement, but if it is not your intention to do so, then a technical correction must be made to insert it.

Finally, there is an important area in which the proposed law is actually MORE restrictive than current law. Under the current law a new political party will have its name printed on registration cards and may nominate its Presidential candidate by national convention if it submits a petition of 10,000 signatures. The new proposal changes this to 1% (approximately 25,000 signatures). This is a completely unjustified new obstacle. The increased petitioning requirement for a new party merely to be recognized and without getting any candidates on the ballot (except President) undermines the positive reform of the rest of the bill.



**PATRICIA CUMMINGS, PH.D.**  
9211 Warfield Road  
Gaithersburg, Maryland 20882-4219

November 13, 1997

Chairman Marie M. Garber  
Commission to Revise the Election Code  
State Department of Legislative Reference  
90 State Circle, Room 116  
Annapolis, Maryland 21401-1991

*VIA FACSIMILE TO WILLIAM SOMERVILLE: (410) 841-3850*

Dear Chairman Garber:

I would like to thank you and the other members of the Commission for allowing me to testify at the hearing on November 12. I would also like to express my appreciation for the Commission's efforts to move towards more openness in Maryland's political system and fairer treatment for independent and non-major party candidates.

You asked that I summarize my testimony in writing. My main points were as follows:

- 1) The required number of petition signatures to attain qualified party status should not be increased beyond the current 10,000.
- 2) The requirements to retain qualified party status through an election should be suspended for 1998 (and possibly 2000). This would "grandfather" the only party affected by the current prohibitive criteria, the Reform Party, and would be consistent with the Commission's recommendation that qualified party status, once obtained, should automatically be retained for two elections.
- 3) On all boards or commissions for which partisan composition is required, at least one seat should be reserved for a registered independent or non-major party representative.
- 4) The Commission should transfer to the main bill the provision permitting qualified parties with 1% voter registration to nominate candidates by convention rather than by petition.

I also request the Commission's support for the following two proposals:

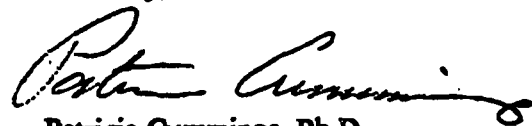
- 1) The label, "Other," should emphatically **NOT** replace "Independent" on the ballot.
- 2) Registered Independents and members of non-major parties or partisan organizations should, in all cases, be allowed to serve as election judges.

In addition, I wish to reiterate my strong support for the points addressed by Mr. William Plies in his testimony before the Commission:

- 1) Voters should be allowed to sign more than one petition in support of party formation and for more than one candidate for the same office.
- 2) Local boards should be required to provide information and expedited appeal procedures for invalidated petitions and petition signatures.
- 3) The party affiliation of a voter registered to a non-major party that loses its party status should not be changed without that voter's written consent.
- 4) Alternate retention mechanisms should be provided for parties that do not wish to run statewide candidates (e.g., combining vote totals from other candidates to meet the required number of votes).

Thank you for the opportunity to testify and participate in the Commissions deliberative process. I ask that the Commission give serious consideration to these recommendations.

Sincerely,



Patricia Cummings, Ph.D.  
Ballot Access Liaison,  
Reform Party of Maryland



# Libertarian Party of Maryland

Commission to Revise the Election Code  
c/o Legislative Reference Services

VIA FACSIMILE

Thank you for the opportunity to share a few thoughts concerning proposals to revise Maryland's ballot access laws. Although I cannot make it today, I am grateful to have the chance to testify in writing. I am writing this both as a registered voter and as Chair of the Maryland Libertarian Party.

I have not always been in the LP. In fact, I cut my teeth in politics as a teen-aged Republican, working on the Nixon-Agnew campaign in Allegany County. When I lived in Virginia in the late 1970s, I served as an elected member of the Arlington County Republican Committee. Even after I moved back into Maryland, I kept involved in the GOP.

I say this not to bore with biographical details, but to make a quick point. When I was so actively involved with the Republican Party, I still supported the rights of other parties, even those with whom I disagreed, to reach the ballot. I was always a willing signer for such efforts. I signed to allow the Socialist Workers Party in the early 80s, the Alliance Party in 1988, and, even the Workers World Party in 1996 run candidates for President. Amazingly, I had never signed a petition for the Libertarians until just recently.

We Libertarians are notorious for our outspoken support of Free Market competition. I want to assure you that means the Free Market of political thought and ideas as well. As Chair, I am concerned that our Party gets the opportunity to get to the ballot, run candidates for office, and to present ideas that might differ from the two established parties. Yet not just for us!

Look at 1996, for example. We had the Republicans and Democrats, of course. Still, several other parties qualified for the Maryland ballot: Reform, Natural Law, Taxpayers, and, of course, the LP. Volunteers for these minor parties spent long hours getting the signatures they needed to be heard in Maryland--and win, lose, or draw, it was worth it.

The main bill would reduce the number of signatures for a statewide office from 3% to 1%. If you have never had to gather signatures for access, even the 10,000 needed to gain recognition as a party is quite daunting. To require the 3%—roughly 78,000 by current registration—we may as well put up a sign saying “Republicans and Democrats ONLY need apply.” At that level, any party which has gathered the initial 10,000 for recognition must then gather the 78,000 signatures for each office they wish to contest. A more open ballot is achieved by cutting the requirement by two-thirds, as proposed, but even more competition might come if the signature requirement were just 10,000, as it is to get a presidential candidate on the ballot.

Reliable research is available on the Internet concerning ballot access laws in all 50 states. A good search engine can find the *Ballot Access News* website, and the September 1997 issue has a chart that gives the current requirements in each state. I heartily recommend looking at it.

For the past several years, Senator Paul Pinsky [D-PG] has introduced a bill to reduce the petition signature requirements in all races from 3% to 1% of the voters eligible in the affected district. The MD Libertarian Party has in the past, and will absolutely continue to support this measure. Last year, *one vote defeated the bill in the House*. This proposal is in one of your separate bills, and we will continue to work and lobby for its passage. Naturally, we and other third parties would like to see the threshold lower than the 1%, but we can be very happy with this step in the right direction.

Your most far-reaching proposal is quite interesting, but brims with “good news/bad news.” The good news is that, once recognized, a party can *stay* recognized more easily, but the task to reach the recognition puts it out of range for most, if not all, alternative parties.

We can give strong support for provisions that recognize a party for *two* general elections and changes provisions for continued recognition so that they are both fairer and simpler: 1% of either gubernatorial or presidential vote *or* registration of 1% of the State’s voters. This would give any of the parties the opportunity to concentrate on *growing* registration figures during the four-year period and not spending valuable time and resources on petitioning just to achieve recognition. To give the opportunity to nominate by convention rather than a petition is certainly a major incentive for any party to grow as well. It is work, but it is possible.

*However*, requiring more than 2-1/2 times the current signature requirement to reach established party status is a big drawback, even with the incentive of qualifying for two election cycles rather than just one. From my discussions with Libertarians around the State, and with other "third" partisans, they regard this provision as far more restrictive and undemocratic, and we would ask that it be modified. Why not leave it at 10,000--or go lower? After all, signatures do not just *magically* appear on petition blanks, and, unless one is in certain jurisdictions, votes will not *magically* appear in machines, either. Public cynicism and low voter turnout are the result of two entrenched parties that have no competition--and many citizens have simply given up trying to affect a system which does not respond to their needs.

Even in states with open ballot access laws--take New Jersey, for example, where 800 sigs get you on the ballot with a party label--experience has shown that a multiplicity of parties still does not create constitutional crises of election results. The 1997 gubernatorial election in New Jersey had nine or so candidates for governor. The top two candidates received more than 90% of the vote, and Libertarian Murray Sabrin, who polled 5%, was the highest vote-getter of the rest of the field.

In sum, we support lowering the signature requirements from 3% to 1% for *all* offices--and even possibly putting a 10,000 signature limit on statewide candidates to encourage more open competition. The reform of criteria for continued recognition deserves support because it provides both breathing room and incentive for parties to consolidate recognition into registration and activities other than petitioning. Finally, nomination by convention for qualifying parties is another great incentive.

Thank you for this opportunity! We look forward to working with you for election reforms in this State.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Boone", with a stylized, flowing script.

Steven E. Boone  
17-E Hogarth Circle  
Cockeysville, MD 21030





## **Maryland Association of Election Officials**

Representing ☐ The Election Boards of the State, Counties and City of Baltimore

**PUBLIC TESTIMONY  
TO THE COMMISSION FOR THE REVISION OF ELECTION LAWS  
by Barbara Feaga, President,  
Maryland Association of Election Laws**

**November 12, 1997**

Representing the Maryland Association of Election Officials, I want to express my sincere appreciation for the courtesy that our organization has received from the commission. We greatly appreciate the fact that our input into the proposed new law has been allowed to be given during the discussion of issues. This has allowed us to provide practical experience with the application of these ideas. While we know that no document can totally reflect all of our opinions and include all of our ideas, we appreciate the fact that you have made every effort to treat all issues fairly and with consideration of all parties involved.

The Legislative Committee of the Association met on Monday, November 10, for the purpose of reviewing the document. It is our intent to let this committee know how our membership has received the document, what changes we are particularly pleased with, which changes that we cannot totally agree with and why. However, we want to assure you that, even with those provisions that we are not happy about, we intend to put a great deal of effort into the passage of this bill as long as major provisions are not changed during the session.

There are three areas of concern to the committee. In general they are concerned about **any measure that increases the size of the ballot**. This relates to the expense of the ballot or the space allowed on a machine. In some cases, it may cause several ballot cards to be used. In others, it may cause an unusually large and cumbersome card. It creates other issues, such as the need for more postage for absentee ballots or the size of envelope may reduce postal savings.

The second area of concern is **any measure that reduces the time between ballot generation and the election**. This relates also to the cost of elections or the possibility of error if there is not adequate time to proof, the need for last minute, competent, willing help and the very real physical strength required to complete all tasks on time.

The third area of concern is **any measure that places unreasonable strains on the funding for elections**. I believe legislators are fully aware of the resistance of local jurisdictions to any unfunded mandates. The election offices and their staffs are placed into a vice and squeezed from four sides, 1) the legislature which writes the laws required to manage elections, 2) the local

jurisdictions which must pay for them, 3) the federal government which imposes additional criteria for their own agendas, and 4) the public for whom the elections are made possible. Our very real challenge is to make it all work despite all of these pressures.

It reviewing this document, we used the synopsis by Nicki Baines as a source for the changes.

**Starting with Title 2 - Powers and Duties of the State and Local Boards** - The committee gave full approval to the greater authority given to the state board in the hope that uniformity, a major goal of our organization, will become a fact. In addition, the good sense issues of staggered terms and term limitations of state board members, and the hours of operation are all issues we can support. The new document also makes many duties previously the responsibility of the boards required by the Director and many duties delegable to the Director. The committee's concern is that the boards will not freely delegate these duties causing political overtones that can weaken and stagnate an office or causing unnecessary and cumbersome procedures that do not serve a real purpose other than to delay activities of the office. Another goal of our organization is to have every office run professionally and efficiently. Having the Director responsible for the activities of the office and the boards responsible for bi-partisan judgements of controversies make for better management and best service to the public. That in no way diminishes the responsibility of the boards to guarantee every citizen a fair hearing.

**Title 3 - Voter Registration** - The committee fully approves of the new and stronger deadlines for submission of Voter Registration Applications by the Motor Vehicle Administration. We support any requirement to strengthen the reporting requirements of other agencies, such as the court systems and the health departments. The committee used the synopsis written by Nicki Baines as their review document. In her report, she mentioned the addition of a requirement for the purpose of identifying those persons placed under legal guardianship since that is part of the criteria for registration. We could find no mention of this in the actual document. We would like to see that added as well as deadlines for these agencies to submit such as monthly or bi-monthly.

**Title 5 - Candidates** - The committee discussed at some length the use of nicknames for candidacy. They were fully aware of the problems with presidential and vice-presidential candidates within the present law, however they see potential problems with the proposed change. There did not seem to be any clear guideline as to what name is acceptable - can they use both the nickname and the legal name, can there be a limitation as to the length of name, or number of names allowed. This may create more problems and we do not need more problems.

**Title 6 - Petitions** - The committee requested clarification of the Advance Determinations section - 6-202. If this is limited to the form of the petition, we have no problem, however we oppose the requirement that our offices, with assistance from a legal authority, provide legal sufficiency of the wording of a petition. The Judicial Review as it relates to this certification may put our offices in jeopardy. This could theoretically place the 'legal authority' in the position of giving legal advice to a potential opponent in a court action. We support the provision for random verification of signatures. This will significantly save time and money.

**Title 8 - Elections** - While the committee did not vote to oppose the provision of including the



unopposed names of the board of education candidates on the primary ballots, we want to make note of the fact that, in some counties more than others, this will create a large problem with the size of the ballot or the space available on the front of a voting machine.

**Title 10 - Polling Places** - A discussion was held about the "commission" for election judges. We would like to see this eliminated, however, it is my understanding from the last commission meeting that it would be combined with the oath and therefore effectively eliminated. Copies of the signed oath effectively commit them to being election judges. In addition, all the duties specifically assigned to election judges in this title appear to require uniformity and that, as stated earlier, is our goal.

**Title 11 - Canvassing** - We concur with the changes as proposed in this title, however we believe that there needs to be a correction in 11-401. According to the proposed bill, the certified election results are due to be transmitted to the various depositories on the day before the last absentee ballots may be counted. That deadline may be adequate for a gubernatorial primary, a special primary or general but not possible for any other election.

**Titles 4, 7,9,12,13,14,15,16** were all approved as presented.

The committee also discussed the separate bills. I believe that the reason these bills are separate is that the package will not be jeopardized by any of these measures. That is a good thing because you should know that we do intend to oppose any change to the registration deadline as totally unworkable. Granted, there were many suggestions about how it could be managed with a lot of ifs. Therefore our response will be "Show me the money!!" before we support any change to the deadline.

The committee took no position on any of the other bills with the exception of the one requiring the last four digits of the social security number. That will enable our offices to guarantee no duplicate registrations, thus is no fraud. This is a service that the public fully expects and we are happy to oblige.

In closing, I want to thank you for providing us with a document we can work with as opposed to the document that we have been dealing with for the last several years. I want to stress that, as election officials, we are very dedicated to the integrity of elections. We take a lot of personal pride in our ability to provide all the services necessary for elections despite all of the outside pressures that make it difficult.



# **LEAGUE OF WOMEN VOTERS OF MARYLAND, INC.**

**200 Duke of Gloucester Street, Annapolis, Md. 21401**

**410-269-0232 phone / 268-7301 fax**

**To: COMMISSION TO REVISE THE ELECTION CODE**  
**November 12, 1997**

The League of Women Voters of Maryland completed a statewide study of several election process issues in the winter of 1997. Our surveys and fact-finding made it clear to us that many perceived problems and inconsistencies were the result of the lack of clear lines of authority and enforcement in the administration of elections in Maryland. Our study resulted in a League position of support for a restructuring of the State Administrative Board of Election Laws (SABEL), with legal authority and adequate funding to enforce election laws and regulations, and support for a professional administrator hired by the Board.

Based on this recent study and the resulting consensus by Leagues throughout the state, the League of Women Voters supports the following changes or revisions proposed in the new draft of the Election Code:

In TITLE 2, we strongly support the following changes made in the organization and powers of SABEL:

The change of name to the State Board of Elections, a name much more in keeping with its new powers and responsibilities;

The creation of staggered terms for the Board;

The expansion of the powers of the State Board of Elections, with broader authority given to manage elections in the state and to direct, support, monitor, and evaluate the activities of local boards;

The mandate to maximize the use of technology and develop a plan for a comprehensive computerized election management system.

We strongly support the creation of the post of Executive Director as a career professional appointed by the State Board. This change from a political appointee is important in giving continuity and full professionalism to our state election process.

The new provision making local boards and staff subject to the direction and authority of the State Board is a change that we support, consistent with the new powers given to the State Board.

In TITLE 3, Voter Registration, we support the language giving the State Board exclusive control over the production and reproduction of voter registration forms. The League supports statewide uniformity of voting registration and registration records.(3:201)

We agree with the removal of very specific guidelines for local boards in maintaining registries of voters. (3:501) The League of Women Voters supports giving the State Board the authority to develop and maintain a centralized, computerized voter registration list, and this new language will expedite the shift to new technology without requiring major changes in the code.

In TITLE 10, Polling Places, we strongly support the new requirements for the State Board to develop a training program for judges and to oversee its implementation. (10:206) The new provision making training for judges mandatory except in emergencies is a needed change. We also agree with the new mandate to the State Board to develop a process to evaluate training and the performance of staff in polling places in each county.

Our League study has shown us that the training and performance of election judges is a vital link in assuring fair elections, and we are glad to see this codified.

The League has a position of support for a minimum compensation level for election judges set by the state, and we would like to see that provision added rather than fixing varying amounts for a few jurisdictions in the code. (10:205)

In TITLE 11, we support the new authority given to the State Board to adopt and implement regulations on the canvassing of votes. (11:201)

The League of Women Voters commends you on the care with which you have addressed these issues of authority and accountability in the election process, and we strongly support the above-named changes.

We commend as well the drafter's achievement of enormous improvements in format and language and the removal of redundancies and obsolete provisions. The resulting document is clear and orderly and much more user-friendly, and will be a help rather than a hindrance in understanding and adhering to election law.

ROBERT O.C. WORCESTER  
President

January 8, 1998

Mr. William G. Somerville  
Executive Director  
Commission to Revise the Election Code  
Department of Legislative Services  
90 State Circle, Room 116  
Annapolis, MD 21401

RE: MBRG Concerns with Maryland Election Code

Dear Mr. Somerville:

Please keep in mind that because of time constraints the indented paragraphs below characterize MBRG's position on two of the most substantive issues brought before the Commission to Revise the Election Code. Our correspondence to commission members during the preceding twelve months, however, shows that these two issues are not our only concerns.

With regard to Mr. George Nilson's recommendations that "... an unsuccessful candidate ought not be permitted to litigate the correctness of the registration rolls after election day ...", this represents an extreme burden of proof before the fact by a candidate who may have been denied the integrity of one of the Republics most fundamental rights. In effect, this recommendation calls for proof that one party is stealing from another before the act has been executed with further provisions that the plaintiff's rights of redress are greatly reduced, perhaps denied. MBRG's inability in the past twelve months in securing responses to our inquiries from state officials, volunteer and appointed, is indicative of the difficulty in achieving redress before the fact and the need for redress after the fact. *Provisions for redress after the fact need to be strengthened.*

With regard to final responsibility — administratively, functionally, and constitutionally — for the conduct of elections in Maryland, it is apparent that there is no such person or office. This conclusion is based on the failure to

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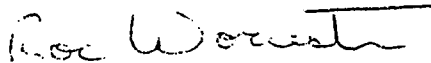
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respond by SABEL and the Commission to MBRG inquiries during the past twelve months. It is also based on responses to questions posed at the final meeting of the Commission to Revise the Election Code on January 7, 1998.

I trust that these observations will be incorporated, as promised by Chairman Marie Garber, with the final documents of the Commission's proceedings.

Sincerely,

 KW

Robert O.C. Worcester

Note: Dictated but not proof read by R.O.C. Worcester

Attachment

cc: Senator David R. Craig  
Mrs. Marie M. Garber  
Delegate Joseph M. Getty  
Peter Hernandez, Esq.  
David Hunter, Esq.  
Mrs. Helen L. Koss  
Linda H. Lamone, Esq.  
Secretary of State John T. Willis

bcc: Bill Somerville

**Certified Mail**  
**Return Receipt Requested**

January 6, 1998

Linda H. Lamone, Esq.  
Chief State Election Officer  
State Administrative Board of Election Laws  
Old Armory, 11 Bladen Street  
Annapolis, MD 21404-0231

Dear Mrs. Lamone:

Under separate cover, we are delivering to you, gratis, a complete and current tape of all registered voters in Baltimore City. We hope you will use these data in the verification of the addresses of Maryland voters no later than April 30, 1998.

The tape is dated November 26, 1997 (most recent official tabulation of data). The tape was processed by MAILnet Services, Inc., an United States Postal Service (USPS) authorized vendor, using the National Change of Address Program (NCOA) on December 9, 1997. It represents a total of 456,553 voter names and addresses (old and new) that are standardized including an 11-digit zip.

All voters who have moved are identified as NCOA matches (exact) or NIXIE matches (flawed addresses according to USPS standards which, however, are deliverable in all but a few instances).

In addition to the above, we enclose the following:

- I. CASS REPORT AND CERTIFICATION (Coding Accuracy Support System, which standardizes all names/addresses according to USPS standards) - This USPS mandatory program will reduce your first class computerized mailing from \$.32 to \$.22 per piece when coupled with the "Move Update Requirement" (MUR) program as required by the USPS.
- II. NCOA/NIXIE MATCHING SUMMARY - The summary indicated that a total of 79,342 voters, or 17.38% of total voters, have moved in the past three years. This breaks down into 51,394 NCOA name and address matches (exact), and 27,948 NIXIE matches (inexact). In addition, it is noted that over the past three years, 59,752 voters have moved within the city, and 19,590 have moved out of the city. This latter group is *still* indicated on the voter rolls.

By using the NCOA method, as suggested by the Federal Election Commission, to single out and identify 79,342 voters who have moved, costs approximately \$900.00 versus a city-wide mailing to 456,553 voters at \$.32 per piece for a total cost of \$146,097.00. The total initial postal savings alone is \$145,197.00.

Considering the additional costs of sorting, key punching, clerical hours, and printing costs, the estimated total savings will approach \$200,000.00 using the NCOA method.

It is our understanding that Baltimore City may have had two city-wide mailings -- one forwardable and another non-forwardable. If this is the case, then the total estimated savings will approach \$400,000.00. Kindly advise if our understanding is incorrect.

III. EXPLANATION OF ITEM II - See enclosures.

IV. FILE RECORD LAYOUT AND FIELD DESCRIPTION - A program needs to be written to pull the names and current standardized addresses of *only* those voters (79,342) who have moved so that an address confirmation message can be sent, forwardable to their last known standardized address.

The National Voter Registration Act (NVRA) was passed by the U.S. Congress in the Spring of 1993 and became effective in Maryland on January 1, 1995. Why, then, would the current official tape (456,553) of all registered voters in Baltimore City indicate the following:

- 456,553 active and inactive voters differs by 91,270 when compared to the SABEL monthly registration report (October 1997) total of 365,283 active and inactive registered voters?
- How is the total of 365,283 determined? What is the source?
- Does Baltimore City maintain two separate sets of books (total roll of voters)?
- Could the total number of inactive voters 50,907 (October 1997) be understated by approximately 40,263 *inactive* voters?
- The NCOA tape (November 26, 1997) reflects 48,805 inactive voters versus the October 1997 SABEL Monthly Report of 50,907. What is the reason for the difference of 2,102 inactive voters?

If you plan to use the NCOA tape for Baltimore City, which we now have provided, on or before April 30, 1998, kindly advise the start and completion dates for your voter address review. The entire activity can be completed in 30 to 45 days. If you do not intend to use the NCOA tape for Baltimore City, please let us know.

In addition, we note a press report in *The Baltimore Sun* dated November 6, 1997 where the Baltimore City Election Board has purchased \$6.1 million in new computer voting machines.



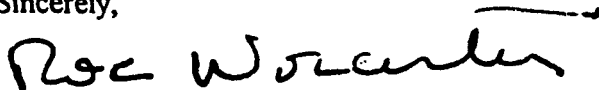
This may be a step in the right direction, however, as the state prosecutor noted in *The Sun* on March 5, 1997, the election in the city in 1994 was beset with "error, poor judgement, negligence, outright incompetence, and problems in procedures."

Integrity of data and management are far more important than these computers.

As Maryland's Chief State Election Officer, you have assumed a dual responsibility to the citizens of this state and to the Federal Government, both civilly and criminally, to manage all elections in a fashion that cannot be questioned.

Therefore, we respectfully request your prompt response to this letter.

Sincerely,



Robert O. C. Worcester

Enclosures

cc: Helen Koss - Chairman SABEL (no cc enclosures)  
John Willis - Secretary of State  
Peter Hernandez, Esq. - U.S. Department of Justice  
David Hunter, Esq. - U.S. Department of Justice



## **APPENDIX H**

### **LIST OF OTHER LETTERS RECEIVED BY THE COMMISSION**

NOTE: Copies of these letters are available from the staff to the Commission to Revise the Election Code, Department of Legislative Services, 90 State Circle, Annapolis, Maryland 21401 (410-841-3870 or 301-858-3870).

Gene M. Raynor, State Administrator of Election Laws. August 26, 1996.

Information referred to the Commission by the State Administrative Board of Election Laws.

Dorothy M. Kaetzel, Election Director of the Washington County Election Board. August 29, 1996.

Suggestions on the revision of provisions relating to voter registration.

Donald B. Robertson, Board of Supervisors of Elections for Montgomery County. Sept., 1996.

Thoughts on approaching the revision in a comprehensive manner.

J. Joseph Curran, Jr., Attorney General. September 3, 1996.

Offering the assistance of his office.

Robert J. Antonetti, Sr., President, Maryland Association of Election Officials. September 3, 1996.

Offering any support or information that could be provided.

Barbara Feaga, Director, Howard County Board of Supervisors of Elections. September 12, 1996.

Suggestions regarding the responsibilities of the local boards and State Board.

Nancy L. Crawford, Anne Arundel County Board of Supervisors of Elections. September 12, 1996.

Suggestions regarding structure of the local boards and State Board.

Audrey Thompson, Board of Supervisors of Elections for Allegany Co. September 12, 1996.

Information concerning structure and governance of elections.

Thomas Gikas, Montgomery County Board of Supervisors of Elections. September 13, 1996.

Information concerning structure and governance of elections.

Brenda R. Williams, Election Director for Queen Anne's County. September 13, 1996.

Views pertaining to local boards.

Susan E. Bratten, President, Montgomery County Board of Supervisors of Elections. September 16, 1996.

Information concerning structure and governance of elections.

Carol S. Evans, Elections Administrator, Montgomery County Board of Supervisors of Elections. September 16, 1996.

Information concerning structure and governance of elections.

*Letters Received by the Commission*  
*Page 2*

Jack Schwartz, Chief Counsel Opinions and Advice, Office of the Attorney General. September 17, 1996.

Addresses problem of inconsistency in the way candidates' names may be listed on ballot; proposal for allowing nicknames.

Anne H. Lee, President, League of Women Voters, Baltimore County. October 1, 1996.

Concerning registration of voters, especially problems faced by college students.

R. Allen Reichlin, President, Caroline County Board of Election Supervisors. October 17, 1996.

Comments on duties of State Board and local boards.

Gene W. Counihan. October 28, 1996.

Suggestions concerning the timing of the election of central committees.

Melvin R. Banks, Member, Montgomery County Board of Supervisors of Elections. January 2, 1997.

Concerns about dealing with natural disasters and other emergencies arising on election day.

Mary O. Lunden, SABEL Counsel, Office of the Attorney General. January 4, 1997.

Addresses issues she thinks Commission should address in Titles 2 and 3.

Mary O. Lunden, Office of the Attorney General. February 5, 1997.

Additional comments concerning Title 2.

Barbara E. Jackson, Board of Supervisors of Elections of Baltimore City. February 6, 1997.

Suggestions on the revisions of the powers and duties of the State Board and local boards.

Henry C. Marshall. February 18, 1997.

Issues regarding implementation of National Voter Registration Act.

Gerald J. Curran, Chairman, Committee on Commerce and Government Matters, House of Delegates. March 3, 1997.

Concerning House Bill 153 - "Election Law - Absentee Ballot Application - Confidential Information".

Robert O. C. Worcester, Maryland Business for Responsive Government. March 6, 1997.

Relating to purging of voter registration lists.

Henry C. Marshall. March 7, 1997.

Concerning the Secretary of State being the Chief Electoral Officer in many states.

Robert J. Antonetti, Sr., Maryland Association of Election Officials. March 12, 1997.

Information about municipal elections and about reduction of the period of closed registration prior to election day.

Barbara Feaga, Howard County Board of Supervisors of Elections. March 12, 1997.

Information regarding registration deadlines.

Jack Schwartz, Office of the Attorney General. March 31, 1997.

Concerning the use of nicknames by candidates.

Phyllis J. Taylor, Director, Federal Voting Assistance Program. April 2, 1997.

Information about 1997 Legislative Initiates of the FVAP.

Helen L. Koss, State Administrative Board of Election Laws. April 3, 1997.

Opposition of State Board to addition of alternate members.

Marjorie H. Atkins, Rockville Republican Women's Club. April 12, 1997.

Issues relating to voter registration and identification.

Joan Paik, President, League of Women Voters of Maryland, Inc. May 27, 1997.

Results of the League's study of the election process.

Scott A. Hancock, Executive Director, Maryland Municipal League. May 30, 1997.

MML approval of proposed revision of law relating to voter registration.

Sharon Maneki, National Federation of the Blind of Maryland. June 27, 1997.

Concerns that the Federation has about requiring affidavits from people assisting blind and visually impaired voters.

Sharon Maneki, National Federation of the Blind of Maryland. July 23, 1997.

Additional comments on accessibility for disabled citizens.

Mary O. Lunden, Office of the Attorney General. July 28, 1997.

Answers to miscellaneous questions posed by Commission.

Paul B. Auerbach. August 4, 1997.

Expresses concern about mailings and solicitations from various candidates.

Barbara Feaga, Howard County Board of Supervisors of Elections. August 8, 1997.

Information concerning delegation of duties of local boards.

Kitty Davis, Board of Supervisors of Elections for Allegany County. August 12, 1997.  
Concerning designation of polling places.

Sharon Maneki, National Federation of the Blind of Maryland. August 22, 1997.  
Invitation for speaker to address convention of Federation.

Barbara Feaga, Howard County Board of Supervisors of Elections. September 17, 1997.  
Suggestions concerning Titles 2 through 11.

James M. Holway. October 1, 1997  
Concerning problem of County Council members in Charter Counties interfering with  
questions on ballot.

Carol S. Evans, Montgomery County Board of Supervisors of Elections. October 1, 1997.  
Comments and questions concerning the revisions.

Robert O. C. Worcester, Maryland Business for Responsive Government. October 1, 1997.  
Concerns about the issue of "line of command" in the implementation of NVRA.

Vic Simon, Maryland Reform Party. October 3, 1997.  
Suggestions concerning Commission's recommendations on political parties.

Henry C. Marshall. October 8, 1997.  
Reference to prior letters concerning constitutional responsibility for elections.

Jack Schwartz, Office of the Attorney General. October 25, 1997.  
Submitting two suggestions for changes in the draft election code.

Carmen Shepard, Office of the Attorney General. October 29, 1997.  
Comments and suggestions concerning draft of the revised election code.

Vic Simon. October 29, 1997.  
Clarifying suggestions in October 3 letter.

Frederick D. Sanders, Supervisors of Elections for Garrett County. November 3, 1997.  
Question on Title 11 provision pertaining to canvassing.

Vic Simon. November 12, 1997.  
Comments on provisions for continuation of recognized status for political party.

Scott Becker, Marylanders for Democracy. November 13, 1997.  
Questions concerning party formation and retention of recognized status.

Russell T. Forte. November 13, 1997.

Concerning registrants of third parties being able to serve as election judges.

Richard Cooke. November 16, 1997.

Concerning the increase in the petition requirement for the establishment of a party.

Donald Graham Sillars (and various others). November 17, 1997.

Concerning changing the name of the Fair Campaign Financing Act to the Public Funding Act.

Douglas E. McNeil, Marylanders for Democracy. November 19, 1997.

Relating to the carry-over of voter affiliation during period when a party loses its "recognized" status.





## **APPENDIX I**

### **Voter Turnout in Maryland: A Statistical Analysis on the Effects of Registration Deadlines and Suggestions for Reform**

**Peter L. Francia**

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**December 1997**

**Report Prepared for the Honorable John T. Willis  
Maryland Office of the Secretary of State**

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*Voter Turnout in Maryland:  
A Statistical Analysis on the Effects of Institutional Barriers & Suggestions for Reform*

### Introduction

In 1986, the Maryland Governor's Task Force on Voter Registration reported that there was a "silent crisis...building in the United States...that reaches every state, every city, every small town...that quietly threatens to undermine the foundation of democracy upon which this nation is constructed." Ten years later, this crisis has grown worse. Maryland turnout figures in 1996 (46.73 % voted out of the voting age population) were its lowest in a presidential election year since 1948.

Nationally, Maryland ranked 39 among U.S. states in 1996 turnout. The low turnout is odd because Maryland ranks in the top of the nation in education and per capita income -- two factors shown to increase turnout. A study by Northwestern University's Medill School of Journalism and WTTW in Chicago found that "likely voters are significantly less educated than likely voters." The results show that 55 percent of the nonvoters had a high school education or less. Among likely voters the figure was 37 percent. In addition, 48 percent of nonvoters reported incomes below \$30,000 per year. By contrast, only 30 percent of voters reported incomes of less than \$30,000 (*Campaign and Elections* 1996, 58).

If education and income are not the causes for Maryland's low turnout, then what is? Groups such as *Common Cause* suggest the low turnout could be the result of overly burdensome registration laws. However, others are skeptical. The Dorchester County Supervisor of Elections stated in written testimony to the Maryland Task Force Committee on Voter Registration, "We believe that this (shortening the registration deadline in Maryland from 29 to 15 days prior to the general election) will only give

procrastinators two more weeks....while we pay the price of added pressure....We do not believe that such a change will create higher turnout, either" (March 12, 1997).

To resolve this debate, this study investigates the effects of voter registration deadlines on turnout. It begins by reviewing the most prominent theories in the political science literature on voter turnout -- those that blame institutional barriers for low turnout and those that blame state culture. After discussing the literature, this study presents its findings. Using multiple regression analysis, the data confirm that turnout in Maryland should be higher, and that the 29 day registration is partly responsible for Maryland's underachieving voter turnout.

This report then covers the political ramifications of a shorter deadline. Contrary to popular myth, evidence from the recently passed National Voter Registration Act shows that Republicans, not Democrats, may benefit more from increased registration rolls. Also addressed are the administrative concerns of a shorter deadline. The Maryland Election Officials cite several points worthy of consideration. On the other hand, states close to Maryland like New York, Delaware, Massachusetts and Connecticut, and states of comparable size like Wisconsin and Minnesota, all have shorter deadlines, but still administer their elections and post better turnout.

Finally, this report reviews election-day registration as a policy proposal for Maryland. It considers the financial costs, the administration process, and the potential increases in voter fraud. After reviewing those concerns, this report concludes by recommending that Maryland adopt election-day registration to increase its voter turnout.

### Review of the Political Literature: The Case for Voter Registration Reform

A large body of research cites low turnout in U.S. elections on legal and structural impediments such as early cut-off dates for registration. Literature from as early as the 1920's blamed "burdensome" registration laws for decreased voter turnout (Merriam and Gosnell, 1924, 243 and Harris, 1929, 153). More recent literature agrees (see Wolfinger and Rosenstone 1980; and Filer, Kenny, and Morton, 1991).

These "burdensome" laws drive up the costs of voting making participation less likely. Those who blame laws and institutions for low turnout argue that states with permissive registration laws minimize the inconveniences of voting. This lowers the time and energy, or the costs, required to vote (Rosenstone and Wolfinger, 1980, 80). With lower costs, voting is more "rational" and hence, is predicted to increase.

Numerous studies have supported this perspective. G. Bingham Powell (1986, 36) discovered that American registration laws, in comparison to other western industrial nations, reduce turnout by as much as 14 percent. Powell claims that "American registration laws...play a substantial role in depressing American voter turnout." He (1986,35) concluded that "adopting automatic registration...would (increase) American turnout...from 54 percent to 70 percent."

Jackman (1987, 417) added, "national differences in norms are unrelated to variations in turnout....results suggest that it is much more profitable to account for such (turnout) differences in terms of the kind of incentives to voting generated by varying national *political institutions and laws*."

### **The Case Against Voter Registration Reform: The Culturalist Perspective**

A competing perspective argues that state political culture offers a stronger explanation for variations in voter turnout. Jackman (1987, 405) explains, "(in participatory) cultures...citizens display heightened enthusiasm for politics: they exhibit greater political satisfaction with and pride in their institutions and are generally more efficacious in the role they and their fellow citizens play in politics....cultures that foster such participatory values enhance voter turnout."

Rosenstone and Hansen (1993, 215) showed that "political culture...influences voter turnout both directly and indirectly....political culture offers significant, theory-driven explanations for differences in voter registration laws and voter turnout among the American states."

Uslaner (1994, 3, 41) explains the reasons. He writes, "You can't solve social problems without a supportive culture, just as you can't build a suspension bridge in the sand. The core of any society is its pyramid of beliefs -- from core values at the top to preferences over alternative policies closer to the bottom....People cast their votes based upon values, interests, and long-standing attachments....If we want lasting reforms, we have to figure out how to change culture."

## **Explaining State Cultures**

Political scientist Daniel Elazar produced the most prominent work on the subject of state cultures. He has traced the history of three dominant subcultures in the United States -- moralistic, individualistic, and traditionalistic (see appendix 2, page 28, for a complete listing of each state's culture). Each subculture is a reflection of the values brought by ethnic and religious groups to different regions of the United States.

The moralistic view arrived in parts of colonial New England from early Puritan settlers. Their descendants, combined with later waves of Scandinavian and northern Europeans, moved into areas of the U.S. Midwest, Northwest, and upper Great Lakes. The moralistic subcultures stressed the importance of the common good and encouraged an involved and participatory citizenry.

Traditionalistic subculture arrived from early settlers of the southern U.S. and later spread throughout the Southwest. Government's function was to protect and maintain the existing social and economic hierarchy. Traditionalistic culture encouraged participation in government for only elites. The political process often legally excluded ordinary citizens from political office or from voting.

Individualistic culture gained its foothold from English and German groups who settled in the Middle Atlantic colonies (this included Maryland) and later New York, Pennsylvania, the lower Midwest, Missouri, and parts of the western United States. It emphasized the value of the marketplace and viewed government and politicians with suspicion. It saw government's role as primarily one to keep the marketplace working efficiently. This culture lacked the political enthusiasm of moralists, but was more open to overall participation than traditionalists.

### Data and Methods<sup>1</sup>

This report tested the effects of voter registration deadlines by analyzing voter statistics among the 50 states and the District of Columbia for the years 1992, 1994, and 1996. It used two methods to control for culture. The first used a statistical technique called "dummy" coding to measure the effects of Elazar's three cultures. The second model opted to measure culture using state demographic statistics. Some scholars question the reliability of Elazar's culture variable because it is difficult to measure in quantitative terms. The second model, therefore, used state population statistics of race and religion to measure culture.

This study also analyzed several other variables known to affect turnout. They included education, income, metropolitan density, the competitiveness of the election, age, and residential mobility.<sup>2</sup> Past research has found that education and income are both important factors in predicting voter turnout (Kim, Petrocik and Enokson, 1975; Wolfinger and Rosenstone, 1980; Cassell and Hill, 1981; Caldeira and Patterson, 1982; Durden and Gaynor, 1987; Filer, Kenny and Morton, 1991). Education was measured by taking the percentage of the state's population with at least a high school degree.<sup>3</sup> Income was measured by the state's per capita income.

States with the highest turnout also tend to be more sparsely populated (Bibby and Holbrook 1996, 111). To control for that effect, state metropolitan density statistics were used. This variable was coded based upon the percentage of the state's population living in a metropolitan area.

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<sup>1</sup> See appendix for explanation of multiple regression analysis.

<sup>2</sup> Education rates, metropolitan density, age, residential mobility, and income were coded based upon 1990 U.S. Census data.

<sup>3</sup> State population percentages of college graduations were explored, but the impact on turnout was less (roughly half the impact of high school graduation rates). In addition, most of the literature on voter turnout uses high school graduation rates, and not college graduation rates.



A competitive electoral environment also increases voter turnout (Bibby and Holbrook 1996, 103). To control for competitiveness, the margin of victory earned by the winning Presidential candidate in each state was used for 1992 and 1996. The margin of victory that determined the winner in a state's gubernatorial contest was used for 1994. U.S. Senate results were substituted for states without gubernatorial elections. States without a gubernatorial or a U.S. Senate race (included Kentucky, Louisiana, North Carolina, and the D.C.) received values based upon model projections.

Age was included to control for the finding of Squire, Wolfinger, and Glass (1987, 48) that showed voters 35 and up voted the most (69 percent versus 57 percent for 25-34 year-olds and 42 percent for 18-24 year-olds). Age was measured based upon the percentage of the state's population above age 35.

Finally, this study controlled for a state's residential mobility (measured based upon the percentage of the state's population that moved within the last five years from an outside state). According to Squire, Wolfinger, and Glass (1987, 57) "movers are less likely to vote (because of) the need to re-register and (because of) the low priority that the action has."

## Findings

### *Factors That Affect Voter Turnout*

#### *Registration Deadlines*

According to the results in table 1, registration deadlines appear to be a significant hindrance to voter turnout in presidential years, but not in midterm elections. The findings reveal that for each day that the registration deadline is further from the general election, turnout decreased by .168 percent (3,335 voters) in 1992 and by .154 percent (2,743 voters) in 1996. The model predicts that a change in the Maryland registration deadline from 29 days before the election to 0 days, would have boosted turnout by 4.87 percent (96,672 voters) in 1992 and by 4.47 percent (79,605 voters) in 1996 -- controlling for culture and other influences.

The model also shows that Maryland's turnout is underachieving. It estimated 1992 turnout to be 55.22 percent and 1996 turnout to be 48.83 percent in Maryland. Actual turnout, however, was 53.38 percent in 1992 and 46.62 in 1996 -- differences of 1.84 percent and 2.21 percent respectively. Maryland, however, would have increased its 1992 turnout to its predicted value by shortening its deadline from 29 days to 18. 1996 turnout data shows that Maryland's turnout would reach its predicted value by changing the deadline from 29 days to 14.

The non-Elazar model, used to compute table 2 results, shows a similar pattern to the findings in table 1. The registration deadline is again a significant predictor of turnout in presidential years, but not in midterm elections. Table 2 shows the registration deadline to have a more modest impact on turnout. It predicts that for each day the registration deadline moves further from the general election, turnout drops by .146 percent in 1992 (2,898 voters) and by .145 percent in 1996 (2,582 voters). It predicts that Maryland's turnout would increase 4.23 percent (83,967 voters) in 1992 and 4.21 percent

(74,974 voters) in 1996 by eliminating the registration deadline. Table 2 results also confirm that Maryland is underachieving. The data predict Maryland's 1992 turnout to be 56.19 percent and its 1996 turnout to be 49.98 percent -- an overestimation of 2.81 percent and 3.32 percent respectively. Using the results from this model, the registration deadline would need to be changed from 29 days to 9 days in 1992 and from 29 days to 6 days in 1996 for Maryland to reach its predicted value. By contrast, the 1994 data in both models bears no statistically significant relationship between turnout and registration deadlines.

### *Culture*

Table 1 reveals that state culture does not impact voter turnout when controlling for other factors. This leads to one of two conclusions. Voter turnout is either not affected by state culture, or Elazar's research is an imprecise measure of culture. Arguments in support of the latter conclusion have some validity.

For example, Elazar's listing of state cultures places California in the same category with Idaho, Kansas, Iowa, and other sparsely populated states with homogenous populations (see page 28 for a complete listing). Most would have to agree that California's present culture is very different from the cultures found in Idaho, Kansas, and Iowa.

Wyoming is also paired with Maryland, New York, and Ohio. Today, there are few similarities between the people of Wyoming and Maryland, New York, and Ohio. The accuracy of measuring culture using Elazar's categorization is, therefore, questionable. The results in this study thus show no impact of state culture on voter turnout.

### *Race*

Table 2 analyze the effects of race on voter turnout. The results show that a state's population of African-Americans has no statistically significant impact on voter turnout across all three election cycles. Higher levels of Latino residents, however, is related to turnout in presidential election years. For every one percent increase of Latinos in a state's population, voter turnout decreased by .181 percent in 1992 and by .148 percent in 1996.

For states with high Latino populations like New Mexico (39.42 percent), California (25.83 percent), Texas (25.55 percent), and Arizona (18.78 percent) these results may explain turnout levels. However, Maryland's Latino population is so small (2.62 percent of the population) that its impact is too minor to make any significant impact on turnout. Race, therefore, in Maryland plays an insignificant role in decreasing voter turnout.

### *Religion*

Table 2 shows that states with higher population percentages of Christians increased turnout in 1992. However, the significance of religion disappeared in 1994 and 1996 by substantial margins. This indicates that 1992 may have been an exception. The results are thus too ambiguous to make an accurate assessment of the effects of religion on voter turnout.

### *Education*

Levels of education are a consistent and strong predictor of voter turnout across all election cycles. Roughly 78.4 percent of Maryland's population has graduated high school. This is above the national average of 76.2 percent. Yet, there are 14 states that

have rates above 80 percent. In Colorado, for example, 84.4 percent of its citizens have completed high school -- 6 percent more than Maryland. If Maryland reached the level of Colorado, turnout would increase roughly 3.74 percent in 1992 (74,241 voters) and 3.82 percent (68,039 voters) in 1996, and by 5.15 percent in 1994 (73,413 voters). Table 2 (non-Elazar model) predicted a slightly higher increase in turnout of 5.46 percent (108,384 voters) in 1992 and 4.62 percent in 1996 (82,276 voters), and by 7.26 percent (103,471 voters) in 1994.

Using either model confirms that high school graduation rates are a crucial component to predicting voter turnout. Maryland's high school education rates are above the national average; however, there is still room for improvement. A commitment to improving high school graduation rates in Maryland would thus be an effective strategy to boost turnout.

### *Metropolitan Density*

Metropolitan density is a consistent predictor of voter turnout across election cycles.<sup>4</sup> The evidence is clear that high levels of metropolitan density depress voter turnout in states. Maryland ranks seventh in the nation in metropolitan density with a rate of 92.8 percent. This partly explains Maryland's voter turnout. Neighboring Delaware, for example, ranks 14 in the nation in metropolitan density with a percentage of 83 percent. According to the results for 1996 in table 1, the 9.8 percent difference accounts for a 1.1 percent (19,590 voters) loss in turnout for Maryland. Results for 1996 in table 2, show a similar loss in turnout of .89 percent (15,850 voters). Delaware's turnout in 1996, however, was nearly 3 percent higher than Maryland's. Thus, metropolitan density only offers partial explanation for Maryland's low turnout.

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<sup>4</sup> Table 2 does not show a statistically significant relationship in 1992. However, table 2 does show a strong relationship for metropolitan density in the other presidential election of 1996 -- indicating that the 1992 result may be an aberration.

### *Margin of Victory*

Results in table 1 and table 2 show that the competitiveness of a state's Presidential election has no statistically significant impact on voter turnout. However, the margin of victory in a mid-term election is a significant predictor of voter turnout. Results in table 1 show that voter turnout decreased .125 percent, and by .110 percent in table 2, for each percentage increase in the winning candidate's margin of victory.

Maryland's very competitive gubernatorial race, thus, boosted turnout -- indicating that its low turnout levels in 1994 would have been even lower in a less competitive race. However, this study acknowledges that the "margin of victory" measure may be flawed for Maryland because of inaccurate polling preceding the gubernatorial race. The extremely tight race between Governor Parris Glendening and Republican Ellen Sauerbrey (50.2 percent to 49.8 percent -- a 0.4 percent margin of victory or 5,993 voters) was a surprise to many. It is thus questionable to what degree turnout was boosted in Maryland by its close gubernatorial contest.

### *Age*

According to results in both table 1 and table 2, increased populations of citizens over the age of 35 boosted voter turnout in 1994 and 1996.<sup>5</sup> There is a large difference between the two models for 1994. Table 2 shows that in 1994 age had a great impact on turnout (.715 percent increase in turnout for every 1 percent increase in state's population of citizens over the age of 35), while table 1 shows only a minor effect (.125 percent increase). There is more consistency with the 1996 data. The results show an impact of

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<sup>5</sup> Table 2 shows that age was not significant in 1996 at the .05 level. However, it is significant at the .06 level. Considering the significant result for age in table 1 for 1996, this study dismisses the minor disparity and treats age as a significant variable for 1996.

.439 in table 1 and .384 in table 2. Since the 1996 data in table 1 has a higher statistical significance, this result is probably the most accurate predictor of age's impact on turnout.

Maryland's population of citizens over the age of 35 ranks very close to the national mean (a mere .1 percent under the average). The effects of age, therefore, have very little impact for Maryland.

### *Residential Mobility*

Table 1 and table 2 show that high levels of residential mobility depress voter turnout. However, Maryland's percentage of residential mobility (12 percent) ranks near the national average (9.4 percent). Its effect on Maryland turnout is therefore minor. The residential mobility statistic is more relevant for states with high levels like Nevada (29.4 percent), Alaska (21.3 percent), and Arizona (19.3 percent).

### *Income*

Table 1 and Table 2 both reveal that a state's per capita income has *no* statistically significant impact on voter turnout. It appears that when controlling for other socio-demographic factors, income is not a predictor of turnout. Thus, Maryland's high per capita income ranking of 5 in the nation apparently does little to boost its turnout.

### **Political Ramifications of Increased Registration & Turnout: Who Benefits?**

In 1993, the federal government imposed the National Voter Registration Act (or popularly called the Motor-Voter Law). The law permits citizens to register with mail-in forms, at motor vehicle agencies, public assistance bureaus, and disability and military recruiting offices. The law was first vetoed in 1992 by President George Bush, and was vigorously opposed by many Congressional Republicans. Their argument against Motor-Voter held that the law was another unfunded mandate on states and that it would lead to voter fraud. However, an additional concern among Republican strategists was the fear that Motor-Voter would help Democrats (Swanson 1996, 2231). Yet, since the law has been passed, statistics show that from 1994 to 1995, registration numbers have increased nationwide (+4,377,156) and in Maryland (+52,535), but that the Republican Party may have benefited more than Democrats.

As of March 1996, Florida had registered over one million new voters through the Motor-Voter Law. According to information from the National Republican Congressional Committee (NRCC), Republicans increased their party numbers in Florida since 1994 by 14.3 percent, while Democratic increases were only 9 percent (Swanson 1996, 2231). Nationwide, the NRCC claims that Republican registration increased 2.9 percent since 1994, while Democratic registration improved by 1.2 percent (Swanson 1996, 2231). Matt Metcalf, communications director of the Georgia Republican Party noted that the new registration laws have not hurt Republicans in Georgia. He remarked, "We've gone from 1 Republican Congressman in 10 to 8 out of 11 (Swanson 1996, 2231).

However, others question the perception that Motor Voter has benefited Republicans. Becky Cain, President of the League of Women Voters of the U.S., commented, "...there really wasn't a whole lot of difference (in party registration). If anybody was looking a little better (after Motor-Voter) it was probably the independent vote" (Swanson 1996, 2232). Human SERVE, a New York City based group in favor of



universal registration, found, "...official Democratic registration fell on average by one percentage point during the 1995, the first year, in the 20 states which maintain party identification statistics. Republican registration remained the same, and Independents gained one point...confirming trends that have been underway for more than three decades" (Report by Human SERVE, October 1996, 6). Yet, an increase in independent voters may reflect more good news for Republicans. Peter Snyder of Luntz Research, a Republican polling and political consulting firm, explained, "These people (independents) have been leaning more Republican" (Swanson 1996, 2231). The numbers are also encouraging for Republicans and Independents in Maryland. Statistics show that from 1994 to 1995, Democratic registration dropped 2 percent (61 percent to 59 percent), while Republican and Independent registration each improved by 1 percent (29 percent to 30 percent for Republicans; 9 percent to 10 percent for Independents).

Thus, while Democrats were thought to capitalize the most from the Motor-Voter Law, the statistics indicate that Republicans and Independents have been the surprise winners. Whether that trend will remain consistent throughout the future is difficult to predict; however, what should be dismissed is the notion that expanded registration and turnout provide Democrats with a decisive advantage. There is simply no evidence to support such an argument.

### **Potential Problems With A Shorter Registration Deadline**

The Maryland Association of Elected Officials expressed a number of concerns regarding a shorter registration deadline in Maryland. They write, "At the present time, election offices throughout the state work in a very pressurized atmosphere 29 days before the election. To make this time frame shorter would only exacerbate a bad situation" (March 12, 1997). They also sighted the following problems with a shorter deadline:

- 1) It would "open the door for many errors that would have a drastic impact on effective and trouble-free election administration within Maryland...jeopardizing the election process";
- 2) Not enough time to verify an individual's address of record;
- 3) Would have to reduce the mandatory residency requirement;
- 4) Possibly eliminate informing persons of their polling place in a timely fashion;
- 5) Cause a second mailing of specimen ballots;
- 6) Infringe upon the election office's ability to distribute and accommodate absentee ballots for citizens out of the County and for walk-in voters seven days prior to the election.

These claims cannot be simply dismissed. The integrity and the legitimacy of an election are essential components to a working democracy. However, in fairness, it is worth noting that Maryland's registration cut-off date of 29 days before the general election compares poorly to many states within its own region. New York (25 days), North Carolina (25 days), Massachusetts (20 days), Delaware (20 days), and Connecticut (14 days) all have less restrictive registration deadlines. New York and Massachusetts

manage to administer their elections with a shorter deadline despite having larger populations than Maryland. Both also posted higher turnout in 1996.

However, if we assume that Maryland officials are correct that a shorter deadline would be a mistake, there is still the method of election-day registration worth considering. The *Maryland National Association for the Advancement of Colored People* (N.A.A.C.P.) has backed the idea and *Common Cause* has noted, "three states that implemented election day registration for the first time in the 1994 election all experienced significant upticks in turnout -- Idaho (up 6.1 percent), New Hampshire (up 1.7 percent) and Wyoming (up 8.6 percent)." Election-day registration must not be confused with a shorter registration deadline. States like Idaho, Maine, Minnesota, New Hampshire, and Wisconsin require their citizens to have their registration forms completed several weeks prior to the election, but also provide the added opportunity to register at the polls on election-day. For example, Idaho citizens must register by mail or at a voter registration office no later than 25 days before the election [deadlines in other election-day registration states include -- ME (15 days), MN (20 days), NH (10 days), and WI (13 days)]. However, voters who miss the deadline still have a final opportunity to register on election-day at the polls. On election-day, election judges perform the activity of registering voters. Voters are required to complete a voter registration card and provide proof of residence. Any voter who provides false information is guilty of perjury. Whether a similar arrangement is necessary, desirable, or feasible in Maryland is considered in the next section.

## **Considerations For Election-Day Registration in Maryland**

Before considering the specific requirements of election-day registration in Maryland, this study reviews the process in Minnesota for two reasons. First, Minnesota (voting age population 3,422,000) is close in size to Maryland (VAP 3,820,000). Second, Minnesota has conducted election-day registration for over twenty years. This extensive experience provides more data and better conclusions about the process.

### *Election-Day Registration in Minnesota: A Case Study*

Minnesota ranked first in the nation in voter turnout in 1996. 64.07 percent of Minnesota's voting-age population voted in 1996 -- 17.45 percent more than Maryland. There are obviously many factors that contribute to Minnesota's high turnout. Election-day registration may be one the them.

To register to vote in Minnesota, citizens have two options. They can register at any time during the 20 days immediately preceding any election by completing a registration card and submitting it in person or by mail to the county auditor or to the Minnesota Secretary of State's Office. The second option is to register on election day by appearing in person at the polling place for the precinct in which the individual maintains residence. The citizen must take an oath in the presence of an election judge and provide proof of residence. Accepted forms of identification include:

- 1) a driver's license;
- 2) a nonqualification certificate issued by the Minnesota Department of Public Safety;
- 3) a current valid student identification card from a post-secondary educational institution in Minnesota;
- 4) a current student fee statement that contains the student's valid address in the precinct together with a picture identification card;

5) having a voter who is registered to vote in the precinct sign an oath in the presence of the election judge vouching that the voter personally knows that the individual is a resident of the precinct. (A voter who has been vouched for on election day may not sign a proof of residence oath vouching for any other individual on that election day).

Authorized poll watchers are allowed in the polling place. Challenges are permitted if: the voter is thought to be someone other than he or she claims to be; if the voter is suspected of living somewhere other than the address stated; or if the voter is thought to be under eighteen years old. If the judge is "satisfied that the voter is qualified to vote, the voter may proceed. If the challenged vote fails to answer satisfactorily or to take an oath he must be denied a ballot" (Smolka 1977, 22).

There are very few cases of challenges. In general, the entire process reports very few problems. Joyce Swader (1997)<sup>6</sup>, the Election Director in Hanapin County -- which oversees elections in Minneapolis -- remarked, "I have been the Elections Director since 1986 and know of no instances in which a person voted twice." Yet, Swader did concede that there are cases of people who register and vote in the wrong precinct. She estimated that there were roughly 500 mistakes made out of 30,784 election-day registrations. Swader countered, however, that this was not a major problem. She stated, "some register at the wrong polling place, but this usually due to an honest mistake by the voter. There has never been a case of deception with intent. The few mistakes that do occur are never large enough to impact an election. There aren't too many people willing to drive 20 miles or so to register and vote in the wrong precinct."

Val Splichal (1997), the Director of Elections in Ramsey County (which oversees elections in the city St. Paul), commented that in her 14 years as director she knows of only 1 case of reported voter fraud. Ramsey County also registered an additional 37,594 people on election-day. Splichal summed up her feelings of election-day registration by stating simply, "I think its great."

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<sup>6</sup> 1997 quotes from election officials were obtained through telephone interviews.

State-wide, Minnesota reported that it registered 337,297 voters on election-day in 1996. This accounts for 15.25 percent of Minnesota's voters. Minnesota's Director of Elections, Joseph Mansky (1997), added that there are very few "good" reasons to oppose election-day registration. He stated that fraud is "non-existent", administration of the process is "simple", and voter turnout is boosted "substantially."

The election-day registration process varies very little across the states that have implemented it. Almost all report that fraud is low and that turnout increases. Conversations with election officials in Idaho, New Hampshire, and Wisconsin indicated strong support for the election-day registration. Kevin Kennedy, the Executive Director of Wisconsin's State Election Board, noted that election-day registration increased Wisconsin turnout in 1996 by 8 percent. He (1997) noted that this was "disappointing." According to Kennedy, election-day registration often increases turnout by 15 percent or more. Nevertheless, he remarked, "Election-day registration works...Abandoning election-day registration would be a major step backward."

### *Adopting Election-Day Registration in Maryland*

The evidence from Minnesota and the testimony of various election officials show very few drawbacks to election-day registration. It is appealing because Maryland could maintain its current 29 day registration deadline (alleviating the concerns mentioned Maryland election officials), while simply adding registration at the polls on election-day. Adopting the procedure is not a difficult endeavor. It would merely require hiring judges or officials to administer the process in each polling place.

Currently, Maryland has 1,449 polling places. Those who work at the polls on election day in Maryland are paid between \$75 and \$150 for a day's work.<sup>7</sup> If all were paid the current top rate of \$150 a day, the state would need to spend \$217,350.

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<sup>7</sup> Information obtained from SABEL.

However, Joyce Swader noted that lines for election-day registration are sometimes long in polling places near the state's major universities. Maryland, therefore, may need to hire additional officials in polling places near the University of Maryland at College Park, Johns Hopkins University in Baltimore, and other universities with large populations throughout the state. If an extra 500 officials were hired to prevent the lines, the cost would increase to \$292,350.

The results in table 1 predict that Maryland's turnout would increase 4.46 percent with the adoption of election-day registration (79,605 voters)<sup>8</sup> -- allowing it to surpass its predicted value. The cost, therefore, to increase turnout through election-day registration would cost roughly \$3.67 for every new voter. However, Val Splichal points out that cost analysis of election-day registration is often misleading. She notes that if the goal is to expand to registration, it will cost money to register a citizen whether it is on election day or some other time. Thus, there are financial costs for any attempts to increase registration.

However, election-day registration does cost more per person than the current methods used in Maryland. The advantages, however, may outweigh the costs. Turnout would increase by over 4 percent -- allowing Maryland to surpass its predicted value. The administration would be easy. In addition, the low levels of reported fraud in other states with election-day registration offer solid evidence that the integrity of Maryland elections would not be placed in jeopardy. Maryland's voter turnout is consistently low, and election-day registration may improve the situation. For those hoping to improve turnout in Maryland, it may be worth the price to try election-day registration.

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<sup>8</sup> Turnout decreases with each day that the registration moves further from the general election. Since election-day registration is 0 days from the general election, and Maryland's current registration deadline is 29 days from the general election, the 4.46 percent result was obtained by multiplying .154 by 29 (see table 1 results).

## Conclusion

Maryland's turnout ranks near the bottom in the nation. This report investigated whether an early registration deadline was the cause. Contrary to the claims of some political scientists and election officials, it found that lengthy registration deadlines do hinder voter turnout. In the case of Maryland, the most recent data show that turnout decreases by as many as 2,700 voters for each day that the registration deadline moves further from election day.

Attempts to shorten the deadline, however, have been resisted by Maryland election officials who claim that such reforms create administrative problems which threaten the integrity of Maryland's elections. To respect many of those concerns, this study did not propose shortening the deadline from its current 29 days. However, it did review election-day registration procedures. Using data from Minnesota and testimony from other election officials, this report concluded that election-day registration would: boost turnout in Maryland to beyond its expected value; be administratively feasible; present little chance for voter fraud; and be worth the cost of administration.

Low voter turnout is a serious concern. The Maryland Governor's Task Force on Voter Registration in 1986 went as far to say that low voter turnout is a problem "that quietly threatens to undermine the foundation of democracy upon which this nation is constructed." The evidence of this study shows that reforms of the Maryland voter registration system would increase turnout. The results are also clear that election-day registration may be the solution to Maryland's problems.



Table 1.  
Effect of Registration Deadlines On Voter Turnout  
(Elazar Model)  
(standard deviation in parentheses)

| Variables                | 1992               | 1994                | 1996               |
|--------------------------|--------------------|---------------------|--------------------|
| Moralistic Culture       | 2.152<br>(1.927)   | -.514<br>(2.150)    | 1.094<br>(1.662)   |
| Traditionalistic Culture | -1.818<br>(2.607)  | 4.711<br>(2.907)    | -.042<br>(2.258)   |
| Education                | .623**<br>(.225)   | .859***<br>(.254)   | .637***<br>(.189)  |
| Metropolitan Density     | -.084**<br>(.044)  | -.161***<br>(.049)  | -.114**<br>(.038)  |
| Margin of Victory        | .017<br>(.067)     | -.125***<br>(.054)  | -.001<br>(.056)    |
| Age                      | .191<br>(.259)     | .125***<br>(.054)   | .439*<br>(.224)    |
| Residential Mobility     | -.425**<br>(.156)  | -.250<br>(.178)     | -.469***<br>(.134) |
| Income                   | -.207<br>(.381)    | -.228<br>(.411)     | .133<br>(.345)     |
| Registration Deadline    | -.168*<br>(.074)   | -.050<br>(.083)     | -.154**<br>(.064)  |
| Intercept                | 20.170<br>(23.753) | -27.211<br>(25.332) | -3.736<br>(20.094) |
| Adjusted R Square        | .67                | .64                 | .68                |
| MD Predicted Value       | 55.22              | 42.78               | 48.83              |
| MD Actual Value          | 53.38              | 38.33               | 46.62              |

N = 51

\*\*\* statistically significant at the .001 level.

\*\* statistically significant at the .01 level.

\* statistically significant at the .05 level.

Table 2.  
Effect of Registration Deadlines On Voter Turnout  
(Demographic Model)  
(standard deviation in parentheses)

| Variables             | 1992                | 1994                 | 1996                |
|-----------------------|---------------------|----------------------|---------------------|
| Pct. African-American | -.084<br>(.093)     | .016<br>(.100)       | -.002<br>(.078)     |
| Percent Latino        | -.181*<br>(.092)    | .030<br>(.115)       | -.148*<br>(.081)    |
| Percent Christian     | .308*<br>(.172)     | .169<br>(.210)       | .096<br>(.155)      |
| Education             | .910***<br>(.208)   | 1.207***<br>(.262)   | .771***<br>(.183)   |
| Metropolitan Density  | -.059<br>(.043)     | -.184***<br>(.052)   | -.091**<br>(.038)   |
| Margin of Victory     | .072<br>(.069)      | -.110*<br>(.056)     | .003<br>(.058)      |
| Age                   | .115<br>(.268)      | .715*<br>(.331)      | .384<br>(.238)      |
| Residential Mobility  | -.394**<br>(.140)   | -.332*<br>(.180)     | -.441***<br>(.126)  |
| Income                | -.147<br>(.340)     | .136<br>(.417)       | .001<br>(.317)      |
| Registration Deadline | -.146**<br>(.068)   | .031<br>(.085)       | -.145**<br>(.061)   |
| Intercept             | -27.017<br>(30.390) | -81.689*<br>(37.672) | -18.210<br>(27.049) |
| Adjusted R Square     | .71                 | .62                  | .70                 |
| MD Predicted Value    | 56.19               | 42.46                | 49.98               |
| MD Actual Value       | 53.38               | 38.33                | 46.63               |

N= 51

\*\*\* statistically significant at the .001 level.

\*\* statistically significant at the .01 level.

\* statistically significant at the .05 level.

## Appendix 1

### *What is multiple regression analysis?*

Linear regression analysis tests whether two variables are linearly related using the equation  $Y = a + BX$  where "Y is the variable being predicted, X (independent variable) is a variable whose values are being used to predict Y (dependent variable), and 'a' and B are population parameters to be estimated. The parameter 'a', called the intercept, represents the change in Y associated with a one unit increase in X, or the slope of the line that provides the best linear estimate of Y from X. Multiple regression contains several predictor variables (X's). If 'k' is the number of independent variables, the equation becomes  $Y = a + B_1X_1 + B_2X_2 + \dots + B_kX_k$  and  $B_1, B_2, \dots, B_k$  are called partial slope coefficients, reflecting the fact that any one of the k predictor variables  $X_1, X_2, \dots, X_k$  provides only a partial explanation or prediction for the values of Y.

Estimates of the intercept 'a' and the regression coefficients,  $B_1, B_2, \dots, B_k$  etc. are obtained mathematically using the method of ordinary least squares (OLS) estimation. These estimates produce the equation  $\hat{Y} = a + b_1X_1 + \dots + b_kX_k$ , where  $\hat{Y}$  is the value of Y predicted by the linear regression equation, a is the OLS estimate for the intercept 'a', and  $b_1, b_2, \dots, b_k$ , is the OLS estimate for the slopes  $B_1, B_2, \dots, B_k$ , etc." (Menard 1995, 1-2).

## Appendix 2

### *Individualistic States*

Maryland  
 Alaska  
 Connecticut  
 Delaware  
 Hawaii  
 Illinois  
 Indiana  
 Massachusetts  
 Missouri  
 Nebraska  
 Nevada  
 New Jersey  
 New York  
 Ohio  
 Pennsylvania  
 Rhode Island  
 Wyoming

### *Traditionalistic States*

Alabama  
 Arizona  
 Arkansas  
 Florida  
 Georgia  
 Kentucky  
 Louisiana  
 Mississippi  
 New Mexico  
 North Carolina  
 Oklahoma  
 South Carolina  
 Tennessee  
 Virginia  
 West Virginia

### *Moralistic States*

California  
 Colorado  
 Idaho  
 Iowa  
 Kansas  
 Maine  
 Michigan  
 Minnesota  
 Montana  
 New Hampshire  
 North Dakota  
 South Dakota  
 Utah  
 Vermont  
 Washington  
 Wisconsin

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## APPENDIX J

### SUMMARY OF BRIEFING BY CURTIS GANS ON VOTER REGISTRATION

Curtis Gans, Director of the Committee to Study the American Electorate, was invited by the Commission to testify about trends in voter interest and turnout. Among the points he made in his remarks, and in response to questions, were the following:

- The National Voter Registration Act (NVRA) will increase registration but decrease turnout as a percentage of registered voters. The new registrants will be less motivated to vote, and motivation is 90% of turnout.
- The State's law should make registration as accessible as possible, while maintaining the integrity of the political process.
- Maryland should achieve full and complete enforcement of NVRA.
- Registration in the State should be in a single computer system. Central computerization makes it easier and cheaper to keep the lists "clean"; the cost of the system could be paid for after four elections because of cost savings.
- Training of public employees who implement NVRA should be upgraded.
- Polling place hours should be 6:00 a.m. until 9:00 p.m. (New York's hours).
- Ensure sufficient polling places, and polling stations within the polling places, so that long lines will not occur.
- A high turnout election (e.g., 60% of eligible voters or 90% of registrants) would overwhelm the current systems.
- Maryland should consider a voter information pamphlet, sent to each registrant, similar to what is used in California, Oregon, and Washington State. It would increase awareness of "lesser" offices.
- Remedies that should not be considered are:
  - Early voting, which costs money and does not increase turnout.

- Open absentee voting (i.e. no reason needed).
- Mail-only voting. The benefits in turnout and cost are outweighed by the threat to the secret ballot and the disparity of information among voters. There should be a "shared body of information as of a specific date."
- There seems to be no advantage in changing the day of the week on which elections are held. It may even hurt turnout to vote on Saturday.
- Low voter motivation is a combination of many factors, many of which are beyond the scope of state election laws. they include the declining quality of civic education, society's increasingly anti-government attitude and self-serving values, the negative impact of television, the fact that most 18-year-olds today have nonvoting parents, the increased stress level of people's lives, and the muddled message from the two major parties.
- The best possible reform would be regulation of campaign advertising on TV, with free time and a minimum duration of 2 minutes for an ad.
- School-based programs such as mock elections and student self-government are important motivators for future voting.
- Among the states, lowest turnout is in the South and the industrialized Midwest. California has seen declining percentages.
- NVRA has provided increased opportunity to vote, but will not necessarily increase turnout.



## **APPENDIX K**

### **SUMMARY DISCUSSION OF PRESIDENTIAL PRIMARY DATE**

After every presidential primary election in Maryland, there is lamenting about low voter turnout by political observers, reporters and editors and occasionally, by losing candidates. This usually results in proposed legislation to change the date of Maryland's presidential primary. Immediately after the 1996 presidential primary election, which had below average voter turnout, legislation was again introduced to change the Maryland presidential primary election date. After hearing, action was deferred by the legislative committees of the Maryland General Assembly pending further study.

Contrary to the assumption of many proponents for earlier presidential primaries, voter turnout in presidential primaries is not driven as much by the date of the election as it is by other factors. Voter turnout in Maryland presidential primary elections from 1960-1996 are presented on the attached graph. There has been higher than average voter turnout in Maryland presidential primaries held in both May and March. For example, the high for Democratic primaries was 53.33% of registered Democrats on May 19, 1964, and the high for Republican primaries was 39.41% of registered Republicans on March 3, 1992.

The dynamics of any campaign are difficult to predict. Future presidential campaigns, dependent on national candidates and national campaign decisions, are virtually impossible for a state legislature to anticipate. Consequently, it is suggested that in determining the appropriate date for a presidential primary in Maryland, the legislature should focus on what is convenient for Maryland voters and what is most likely to draw the attention of presidential candidates.

Modern presidential campaigns are intensely media-driven endeavors and Maryland should not be viewed in isolation from other states and the dynamics of the

national campaign. The timing and sequence of the national campaign, the respective party delegate selection processes and the likelihood of success in Maryland calculated by the various candidates are the primary factors in attracting presidential candidate attention to Maryland.

The attention lavished upon Iowa and New Hampshire by presidential candidates and the media has fueled a reaction in other states during the past decade to frontload the nomination process. As a result of this push for earlier dates, the major political parties and affected state election officials are discussing a range of options including regional primaries, rotating primaries and the viability of a system of granting bonus delegates to states with later primary dates to balance the nomination process.<sup>1</sup>

A March presidential primary in Maryland has the potential complication of uncertain weather conditions and also creates a distortion of the election calendar. The current early presidential primary date means that the corresponding congressional elections in Maryland are only separated by 16 months from the day after the November election in a gubernatorial year to the March presidential primary election. Following the presidential primary in which congressional candidates are nominated; there then exists a lengthy eight-month general election period. The unusual and varying lengths of the election time frames caused by the current law generates problems for congressional candidates, both challengers and incumbents who have to start campaign activities earlier than they would with more evenly distributed election cycles. An early March primary also creates administrative difficulties with filing periods that occur in late December during the holiday season and with party rules that require filings for delegate selection to occur only in the year in which the presidential election is held.

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<sup>1</sup> The presidential nomination process has been the subject of extensive debate with numerous proposals for change. One of the more recent, "The Presidential Primary Act of 1996," S1589, introduced by Senator Gorton (R-WA) on March 5, 1996 proposed that the fifty states be divided into four geographical regions and hold rotating presidential primaries on the first Tuesday of March, April, May and June.

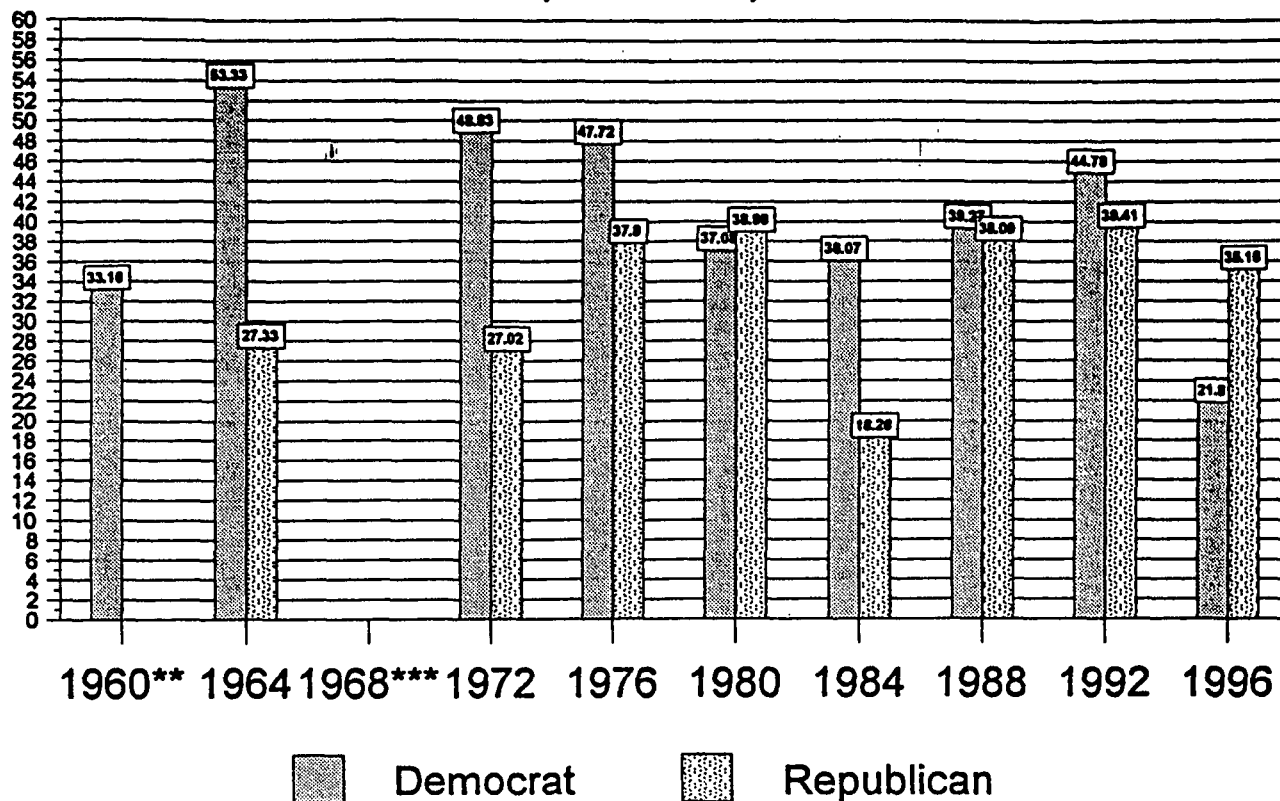
In consideration of these factors, the creation of a mid-Atlantic regional primary would be an effective way for Maryland to attract presidential candidates to focus attention on Maryland and the issues of concern to Marylanders. A regional primary allows a candidate to make the most effective use of campaign resources by concentrating on the reality of media markets which cross state boundary lines. For example, few presidential candidates can afford to buy media in the Washington television market for a Maryland presidential primary because of the inefficiency of spending money on Virginia and District of Columbia voters who now vote on different dates than Maryland. The state legislature and other interested parties may wish to begin building coalitions to form a possible regional primary with all or some of the surrounding states of Delaware, Pennsylvania, West Virginia, the District of Columbia and Virginia.<sup>2</sup>

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<sup>2</sup> Prepared by J.T. Willis from Presidential Elections in Maryland and official records obtained from the State Administrative Board of Elections (SABEL).

## Voter Turnout in Maryland Presidential Primaries\*

(1960 - 1996)



\* Prepared by J.T. Willis from Presidential Elections in Maryland and official records obtained from the State Administrative Board of Elections (SABEL).

\*\* In 1960, the Republican Party did not hold a Presidential Primary Election in the State of Maryland.

\*\*\* In 1968, neither the Republican Party nor the Democratic Party held Presidential

**Maryland Presidential Primaries  
(1960-1996)<sup>1</sup>**

| <u>Date</u>  |         | <u>Democrat</u>    |        | <u>Republican</u> |
|--------------|---------|--------------------|--------|-------------------|
| May 17, 1960 | 201,769 | John F. Kennedy    |        | (No Contest)      |
|              | 49,420  | Wayne Morse        |        |                   |
|              | 24,350  | Unpledged          |        |                   |
|              | 7,536   | Lar Daly           |        |                   |
|              | 3,881   | Andrew J. Easter   |        |                   |
| May 19, 1964 | 267,106 | Daniel B. Brewster | 57,004 | Unpledged         |
|              | 214,849 | George C. Wallace  | 22,135 | John Steffy       |
|              | 12,377  | Unpledged          | 18,859 | Robert Ennis      |
| May 15, 1972 | 219,687 | George C. Wallace  | 99,308 | Richard Nixon     |
|              | 151,981 | Hubert Humphrey    | 9,223  | P. McCloskey      |
|              | 126,978 | George McGovern    | 6,718  | J. Ashbrook       |
|              | 17,728  | Henry M. Jackson   |        |                   |
|              | 13,584  | Samuel Yorty       |        |                   |
|              | 13,363  | Edmund Muskie      |        |                   |
|              | 12,602  | Shirley Chisolm    |        |                   |
|              | 4,776   | Wilbur D. Mills    |        |                   |
|              | 4,691   | Eugene McCarthy    |        |                   |
|              | 2,168   | John V. Lindsay    |        |                   |
|              | 573     | Patsy T. Mink      |        |                   |
| May 18, 1976 | 286,672 | Edmund G. Brown    | 96,291 | Gerald Ford       |
|              | 219,404 | Jimmy Carter       | 69,680 | R. Reagan         |
|              | 32,790  | Morris K. Udall    |        |                   |
|              | 24,176  | George C. Wallace  |        |                   |
|              | 13,956  | Henry M. Jackson   |        |                   |
|              | 7,907   | Ellen McCormack    |        |                   |
|              | 6,841   | Fred Harris        |        |                   |
| May 13, 1980 | 226,528 | Jimmy Carter       | 80,577 | R. Reagan         |
|              | 181,091 | Edward Kennedy     | 68,389 | George Bush       |
|              | 45,879  | Unpledged          | 16,244 | J. Anderson       |
|              | 14,314  | Edmund G. Brown    | 2,113  | Phillip Crane     |
|              | 4,891   | Cliff Finch        |        |                   |
|              | 4,338   | Lyndon LaRouche    |        |                   |

<sup>1</sup> Neither major party held a presidential primary in Maryland in 1968.

| <u>Date</u>   |         | <u>Democrat</u>    |         | <u>Republican</u> |
|---------------|---------|--------------------|---------|-------------------|
| May 8, 1984   | 215,222 | Walter Mondale     | 71,892  | R. Reagan         |
|               | 129,387 | Jesse Jackson      |         |                   |
|               | 123,365 | Gary Hart          |         |                   |
|               | 15,807  | Unpledged          |         |                   |
|               | 7,836   | Lyndon LaRouche    |         |                   |
|               | 6,238   | John H. Glenn      |         |                   |
|               | 5,796   | George McGovern    |         |                   |
|               | 1,768   | Alan Cranston      |         |                   |
|               | 1,467   | Ernest F. Hollings |         |                   |
| March 8, 1988 | 242,479 | Michael Dukakis    | 107,026 | George Bush       |
|               | 152,642 | Jesse Jackson      | 64,987  | Robert Dole       |
|               | 46,063  | Albert Gore, Jr.   | 12,860  | Pat Robertson     |
|               | 42,059  | Richard Gephardt   | 11,909  | Jack Kemp         |
|               | 16,513  | Paul Simon         | 2,551   | Pierre DuPont     |
|               | 14,948  | Uncommitted        | 1,421   | A. Haig           |
|               | 9,732   | Gary Hart          |         |                   |
|               | 4,750   | Bruce Babbitt      |         |                   |
|               | 2,149   | Lyndon LaRouche    |         |                   |
| March 3, 1992 | 230,490 | Paul Tsongas       | 168,374 | George Bush       |
|               | 189,905 | Bill Clinton       | 71,647  | Pat Buchanan      |
|               | 46,480  | Edmund G. Brown    |         |                   |
|               | 36,155  | Uncommitted        |         |                   |
|               | 32,899  | Tom Harkin         |         |                   |
|               | 27,035  | Bob Kerrey         |         |                   |
|               | 4,259   | Lyndon LaRouche    |         |                   |
| March 5, 1996 | 247,492 | Bill Clinton       | 135,522 | Robert Dole       |
|               | 33,417  | Uncommitted        | 53,585  | Pat Buchanan      |
|               | 12,920  | Lyndon LaRouche    | 32,207  | M.S. Forbes       |
|               |         |                    | 14,061  | L. Alexander      |
|               |         |                    | 13,718  | Alan Keys         |
|               |         |                    | 2,872   | Richard Lugar     |
|               |         |                    | 1,174   | Phil Gramm        |
|               |         |                    | 757     | Robert Dornan     |
|               |         |                    | 350     | Maury Taylor      |

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August 29, 1996

Commission to Revise the Election Code  
Marie M. Garber, Chairman  
c/o Mr. William Somerville and  
Ms. Carol Swan  
Department of Legislative Reference  
90 State Circle  
Annapolis, Maryland 21401

Dear Chairman Garber and Members of the Commission:

By your letter of July 24, 1996, you solicited comments and suggestions to the Commission relative to your daunting task of undertaking a "comprehensive revision of the Election Code."

While it is difficult to know where to begin in responding to such a request, I suppose I could begin by doing the obvious - and referring your Commission to the Report of the Governor's Commission to Review the Election Laws dated January 15, 1987 - a Report which focused entirely on campaign finance issues. Since you were a member of that Commission, and since staff for your Commission were actively involved in the preparation of the 1987 Commission's Report, I assume I don't need to provide you with a copy of that Report or a summary of its conclusions and recommendations. While some of those recommendations ultimately led to changes in the campaign finance laws, many of the recommendations remain valid and in need of continuing attention. I am not sure I have a whole lot to add to the recommendations of that Commission insofar as campaign finance laws are concerned, since I believe we covered the waterfront pretty well in 1987. I would point out that while not contained in the 1987 Commission's Report, you may recall that we wrote separately to the Governor's Office in, I believe, late 1986, urging favorable consideration for the budgeting of sufficient funds to allow SABEL to computerize its campaign finance reports. I mention that recommendation because it was made separately and not contained in the Commission's Report, and because that matter has been the subject of some recent public comment and attention.

Commission to Revise the Election Code  
August 29, 1996  
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My primary involvement in election law related matters since the work of the 1987 Commission was concluded has been in the representation of several candidates for office, including both Governor Parris Glendening and Delegate Pete Rawlings, in defending against election contest proceedings instituted after the conclusion of an election. Each of these contested election proceedings raised issues which I would urge your Commission to consider in its review of the Election Code. The following issues come to mind:

1. In the Rawlings case, it was alleged that a particular piece of political literature was unfair or misleading and contained an authority line that was not in technical conformance with the requirements of the Election Code. The Judge (Baltimore City Circuit Court Judge Hammerman) found that the authority line was in technical compliance and that the contents of the particular piece of political literature were not misleading, or at least not sufficiently misleading to constitute grounds to set aside the results of the election. Because it is so often possible to argue that a piece of campaign literature is not entirely accurate, or is slightly misleading, the question arises as to whether an unsuccessful candidate should be able to contest the results of an election based on a combination of such an assertion coupled with a claim that the political literature in question did not fully comply with the technical authority line requirements. It seems to me a dangerous precedent to allow unsuccessful candidates to overturn the results of an election based on some piece of debatable campaign literature simply because the fairness or accuracy of the campaign literature may be debatable and because there was a failure to fully comply with the authority line requirements (thus making the campaign literature "inconsistent with" the provisions of the Election Code, - to quote the phrase employed in Section 19-2 of Article 33). I would suggest that an election contest should only be able to succeed based on such a claim when (a) the campaign literature is grossly misleading and (b) the claimed authority line violation is such that a reasonably diligent inquiry by a recipient of the literature would not be likely to reveal the correct identity of the sponsor of the literature. I should also point out that the Court of Appeals Opinions in Snyder v. Glusing (cited in the Annotations to the Election Contest Statute) dealt with an election contest turning on the use of "official ballot" literature.

2. In the Sauerbrey v. Glendening case, there was considerable uncertainty throughout the entirety of those proceedings as to whether the Circuit Court for Anne Arundel County even had jurisdiction to entertain and decide the election contest which it did entertain and decide. Assistant Attorneys General Bob Zarnoch and Mary Lunden can fill you in in greater detail with regard to the particulars and the merits of that dispute - and I am sure that they will confirm to you that that issue remains uncertain and up in the air. The argument advanced by many in the Attorney General's Office, and supported



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by case law, was to the effect that exclusive jurisdiction to resolve such a contested election lay in the House of Delegates, and that subject to certain very narrow exceptions, the Circuit Courts lack jurisdiction to entertain such proceedings notwithstanding the provisions of the contested elections law. Any resolution of these ambiguities and uncertainties would, I believe, require a constitutional amendment.

3. The Sauerbrey v. Glendening case involved a number of substantive issues - and in some instances the law has already been changed so as to either moot or resolve those issues. Those legislative changes would include the changes relative to purging the voting rolls and the change which I believe was enacted earlier this year relative to affidavits for absentee ballots. Much of the Sauerbrey v. Glendening proceeding involved claims that various people and categories of people remained registered on election day and cast ballots for one or the other candidate, but that those people in fact should not have still been registered for a variety of reasons. The election challenger, Ms. Sauerbrey, attempted to argue that there were a sufficiently large number of "illegally" or "wrongfully" registered voters who cast ballots to draw into question the outcome, given Governor Glendening's relatively narrow margin. Almost without exception, the Sauerbrey lawyers acknowledged that they were not contending that the improper registrations were the fault or the doing of the Glendening people, but were simply claiming that the people remained inappropriately registered because of the alleged sloppiness or negligence of election officials or the failings of the registration system generally. While occasionally these allegations were described as allegations of "fraud", I think it is fair to say that they were nothing more than allegations of negligence or sloppiness or an imperfect registration system. It seems to me that an unsuccessful candidate ought not to be permitted to litigate the correctness of the registration rolls after election day and after the ballots have been cast, at least without a showing of fraud by election officials or direct participation by the opposing candidate in causing or bringing about the challenged improper registrations. The time for correcting the registration rolls is before the election, or in certain instances on election day at the polls through challengers, and once a ballot has been cast by a person whose name appears on the registration rolls, the validity of that registration ought to be conclusively correct, or at least ought to bear a very strong presumption of correctness in any election contest. I believe that this is the case based on existing case law and provisions of the Election Code, but there is no clear and explicit provision to this effect. I would recommend that such a provision be added to the Election Code.

4. There is a continuing need to improve the training and quality of election judges in the State. I think the election system would benefit if the selection of judges were to be further depoliticized and geographical residency barriers were to be

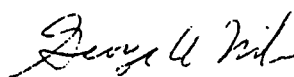
Commission to Revise the Election Code  
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Page 4

eliminated, e.g., by allowing Baltimore County residents to serve as judges in Baltimore City. I also believe that SABEL should be either required or authorized to establish minimum requirements for training of, and training materials for, election judges. At the very least, local training materials should be evaluated by SABEL, and the best (better) materials provided to other jurisdictions for their consideration. With regard to the perennial problem of locating a sufficient number of Republican judges to serve in Baltimore City, I think the laws should be changed so as to allow the Board to send out last-minute substitute judges without regard to their registration if the judges of one party or another either fail to show up or advise the Board in the several days before the election that they will not be able to serve. While it is obviously a desirable objective to have both parties fully represented among the judges who serve at a polling place, if the judges of one party or the other do not show up, then providing a full complement of well-trained judges (without regard to registration) should be the overriding principle.

Finally, I think SABEL should be explicitly given general rulemaking authority pursuant to which it would be authorized to clarify and amplify any of the provisions of the Election Code. Any proposed rules should be the subject of solicited comment from all local boards, and should be subject to the AELR process. Such authority, if exercised, could significantly contribute to the clarity and uniformity of the Law and the system.

There are countless other issues raised by the various provisions of the Election Code, and I do not in any way intend the above list of suggestions to be exhaustive. If I can be of any help to the Commission as it proceeds with its work, please do not hesitate to let me know. If the Commission focuses on any particular area within the Election Code and you think input would be useful, I would be happy to provide it at the time. I look forward to following the work of the Commission, and I wish you and your fellow Commission members well in your undertaking.

Sincerely yours,



George A. Nilson

GAN/bal

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November 20, 1997

## FACSIMILE AND U.S. MAIL

Commission to Revise the Election Code  
Marie Garber, Chairperson  
Department of Legislative Reference  
State Circle  
Annapolis, Maryland 21401

Dear Chairperson Garber:

Following my testimony before the Commission last Wednesday, when I appeared in conjunction with Deputy Attorney General Carmen Shepard, you asked me to send you a short letter or memorandum summarizing my recommendations/suggestions. This letter is my effort to do so.

As I said in my letter to you of August 29, 1996, and as I repeated in my testimony, the challenger/plaintiff in the Sauerbrey v. Glendening election contest sought to overturn the results of the election based largely on a challenge to the validity of the registration of tens of thousands of Maryland voters, some of whom had obviously (or presumably) cast their ballots for then Governor-Elect Glendening. The challenger's theory was that there was a sufficient number of improperly registered Marylanders who voted (or who may have voted) for Governor-Elect Glendening to draw into question the validity of the outcome of the election (in which the difference between the candidates was less than 6,000 votes). While the challenger obviously could not prove the specific candidate for whom these allegedly invalidly registered voters voted, she sought to use certain extrapolations based on the general returns in the three jurisdictions in which she sought to prove her case - Baltimore City and Prince George's and Montgomery Counties. While both the State and Governor-Elect Glendening took the position that as a matter of law a challenger cannot contest an election based on a post-election contention that certain voters were improperly registered (or improperly retained on the rolls), and relied on existing Maryland law in asserting that position, there was no clear and explicit statutory provision to that effect and the Circuit Court proceeded to address the merits of

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November 20, 1997  
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the challenger's claim of improper registrations. As I said at last week's hearing, this kind of election contest challenge to the validity of voter registrations is not in any way unique to Maryland, as is illustrated by the several recent/pending Congressional election contests.

My recommendation to the Commission was that it propose the addition of an explicit provision to the Election Code barring reliance on post-election day challenges to the registration of voters in election contests, subject only to possible exceptions for situations where the challenger alleges and is able to prove that: (1) the opposing candidate directly or indirectly participated in causing or bringing about the challenged improper registrations; or (2) the improper registrations were caused by the affirmative fraud of election officials, as opposed to negligence, sloppiness, mistakes or the like. I pointed out that there are ample opportunities to challenge registrations before the books are closed, and to challenge voters on election day (based on identity challenges).

If the Commission agrees with this recommendation generally, it should suggest drafting such a statutory provision broadly so as to encompass not only judicial election contests decided in the courts but also, to the extent constitutionally permitted, those instances where the House of Delegates has the ultimate decision-making authority.

In addition, I also recommended in my letter and testimony that the Commission propose a constitutional amendment transferring the authority to decide election contests in the case of elections for Governor and Lieutenant Governor from the House of Delegates, where, notwithstanding the Sauerbrey case, it probably in fact resides, to the Courts, at least where those contests relate to the validity of the ballots cast and the validity of the outcome of the election (as distinct from the eligibility or qualifications of the successful candidate(s)). While at least one member of the Commission expressed real reservations about such a proposal, and questioned whether the courts are the most appropriate decision-makers for matters such as this, I explained in my testimony that I thought the following factors supported transferring the decision-making authority from the House of Delegates to the courts:

1. The need to have the decision rendered by a decision-maker accustomed to resolving factual disputes.
2. The desirability of having a matter of such importance resolved by an entity that is perceived to be apolitical, and hopefully is apolitical.

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3. The importance of having the decision made by an entity and in a proceeding in which the public will have confidence that its right to decide who the next Governor of the State will be has not been somehow taken away from it.

4. The need to have the decision committed to an entity capable of acting swiftly, so that the questions and issues presented can be decided before the time set by the Constitution for the Governor to commence his or her term of office.

In the discussion about this proposal, questions were raised about the effective date of any such proposed constitutional amendment that might appear on the ballot, and also generally about the desirability of deferring the issue until the next Presidential election year (2000). I understand entirely the considerations supporting the notion of deferring this constitutional amendment until the Presidential election year. If such a constitutional amendment were to be voted on in a Gubernatorial election year, whether or not it would be applicable to the Gubernatorial election being conducted at the same time should be spelled out in the legislation proposing the constitutional amendment - in order to eliminate any uncertainty on the question.

If I can be of any further help to you or answer any questions, please do not hesitate to call me. I apologize for the delay in getting this letter to you - I hope it is sufficiently timely to be of help.

Sincerely yours,



George A. Nilson

GAN/bal

cc: Deputy Attorney General Carmen Shepard



APPENDIX M

J. JOSEPH CURRAN, JR.  
Attorney General

CARMEN M. SHEPARD  
DONNA HILL STATION  
Deputy Attorneys General



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TELECOPIER NO.

STATE OF MARYLAND  
OFFICE OF THE ATTORNEY GENERAL

WRITER'S DIRECT DIAL NO.

November 7, 1997

William G. Somerville  
Commission to Revise the Election Code  
90 State Circle, Room 116  
Annapolis, MD 21401

Dear Bill:

I am enclosing a portion of a pleading that reflects the State's position in the last election regarding the justiciability of a gubernatorial election. Marie Garber asked me to forward this material to you so it could be made available to the members in advance of the November 12 public hearing.

If you have any questions, please do not hesitate to call.

Very truly yours,

*Carmen M. Shepard*  
Carmen M. Shepard  
Deputy Attorney General

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encl.

**VOTES IN THE ELECTION OF THE GOVERNOR RESTS WITH THE HOUSE OF DELEGATES.**

**A. The Court Should Decide This Case Notwithstanding The Jurisdictional Bar.**

The Circuit Court for Anne Arundel County did not address the "extremely important and critical issue," of its jurisdiction to decide the questions raised in the petition. (E.2) While State and Local appellees urge this Court to address this issue, they are not requesting that the Court vacate the judgment below. Rather, State and Local appellees request that this Court, as it has done before with issues of great public importance, decide the merits of the case even if the Court determines that the circuit court was without jurisdiction to decide the merits. *Montgomery County v. McNeece*, 311 Md. 194 (1987); *Board of Medical Examiners v. Steward*, 203 Md. 574, 581 (1954) (while the Court ordinarily does not give views on any question raised by a dismissed appeal, the Court occasionally does so when issue is of great public importance).

Few questions will be as important as whether the Governor (who will be sworn in this Wednesday, January 18, 1995) was fairly and freely elected. Appellants were afforded a full opportunity to present their evidence, a fair hearing was had, and a just decision was rendered in the forum of their choice. The citizens of Maryland have a great and compelling interest in learning that the decision of the court below was correct. They have an equally compelling interest in settling the question of whether the Maryland Constitution, which unequivocally commits challenges to election "returns" in a Governor's race to the House of Delegates, also allows state courts a role in adjudicating such a challenge.



**B. Constitutional Provision**

The justiciability issue arises from Article II, §4 of the Constitution of Maryland, which states that "all questions in relation to the eligibility of Governor and Lieutenant Governor, and to the Returns of said election, and to the numbers and legality of votes therein given, shall be determined by the House of Delegates . . . ." Md. Const. (1981 Rep. Vol.), Art. II, §4. As set forth in detail below, the clear language of this provision, its constitutional history, and the principles of constitutional interpretation recognized by this Court in *Lamb v. Hammond*, 308 Md. 286 (1987), and other cases, compel the conclusion that only the House of Delegates may decide issues such as those raised in the petition, all of which involve the "returns" and the "number and legality" of the votes cast in a gubernatorial election.

In a series of provisions that are unique to elections for the Office of Governor and Lieutenant Governor, the Constitution of Maryland sets forth comprehensive procedures applicable to the election of the Governor. More importantly, the Constitution also provides *who* is to resolve questions relating to the votes and results of the election for Governor.

In language that has remained unchanged and unqualified since 1851, the Constitution provides that the proper forum to resolve *all* questions in relation to the "returns" and to the "number and legality" of the votes in a gubernatorial election is the House of Delegates. Article II, §4, currently provides:

If two or more sets of persons shall have the highest  
and equal number of votes for Governor and Lieutenant

Governor, one set of them shall be chosen Governor and Lieutenant Governor, by the Senate and House of Delegates; and all questions in relation to the eligibility of Governor and Lieutenant Governor, and to the Returns of said election, and to the number and legality of votes therein given, shall be determined by the House of Delegates; and if the person having the highest number of votes for Governor or for Lieutenant Governor or both of them, be ineligible, a person or persons shall be chosen by the Senate and House of Delegates in place of the ineligible person or persons. Every election of Governor or of Lieutenant Governor, or both, by the General Assembly shall be determined by a joint majority of the Senate and House of Delegates; and the vote shall be taken viva voce. But if two or more sets of persons shall have the highest and an equal number of votes, then, a second vote shall be taken, which shall be confined to the sets of persons having an equal number; and if the vote shall again be equal, then the election of Governor and Lieutenant Governor shall be determined by lot between those sets, who shall have the highest and an equal number on the first vote.

Constitution of Maryland, Article II, §4 (1970, ch. 532, ratified Nov. 3, 1970.) (emphasis added).

Because "[t]he rules governing the construction of statutes and constitutional provisions are the same," *Luppino v. Gray*, 336 Md. 194, 204 n.8 (1994), the inquiry into the meaning of this constitutional provision begins with "the words of [Article II, §4], giving them their ordinary and natural import." *Fairbanks v. McCarter*, 330 Md. 39, 46 (1993).<sup>7</sup> In this case, the language so clearly evidences its apparent purpose, that a decision could rest at that initial level of inquiry. See *Kaczorowski*, 309 Md. at 515 ("Sometimes the language in question will be so clearly consistent with the apparent purpose (and not productive of any absurd result) that further research will be

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<sup>7</sup> See also, e.g., *McCready Memorial Hospital v. Hauser*, 330 Md. 497, 504 (1993); *Williams v. State*, 329 Md. 1, 15 (1992); *NCR Corp. v. Comptroller*, 313 Md. 118, 124 (1988); *Kaczorowski v. Mayor and City Council of Baltimore*, 309 Md. 505, 513 (1987).

unnecessary." ). If ever there were a "textually demonstrable constitutional commitment of the issue to a coordinate political department," this is it. *Lamb*, 308 Md. at 293, quoting *Baker v. Carr*, 369 U.S. 186, 198 (1962). Accord Niles, *Maryland Constitutional Law* at 104 ("It will be observed that the provisions for determining who has been elected governor at any particular election, found in these sections, are very full and particular." ).

The explicit language of the constitutional provision encompasses "all questions" in relation to the returns of the election for Governor and Lieutenant Governor and to "the numbers and legality of votes" cast in those elections. This case involves precisely such issues and no others: appellants asserted that "illegal votes were received" and that "proper votes were rejected or dishonored." This suit does not seek to determine "whether the administrative officials have carried out their ministerial duties", *Lamb*, 308 Md. at 304, but presents instead the ultimate political question: a declaration that "the petitioners were elected." Petition at ¶85. Because these questions fall squarely within the ambit of Art. II, §4, which grants authority to resolve these questions only to the House of Delegates, "the authority of such body to resolve the issue is ordinarily exclusive and precludes an initial decision by the courts." *Duffy v. Conaway*, 295 Md. 242, 258-59 (1982).

### C. Constitutional History

The history of the constitutional provision confirms the straightforward conclusion derived from its plain language. Prior to 1837, the Governor was chosen, for a one year term, by joint vote of the House of Delegates and the Senate. *Lamb*, 308 Md. at 294. The

Constitution was amended in 1837 to provide for the direct popular election of the Governor. *Id.* The provision relating to the election for Governor was drafted in the 1836 session by Chapter 197, 1836 Laws of Maryland, and was part of the general constitutional reform allowing voters more direct participation in choosing the Senate and the Governor. *See generally* Walsh and Fox, *Maryland: A History 1632-1974*; Journal of Proceedings for the Senate, January 17, 1837, pp. 75-83 (Exhibit A to State's Motion to Dismiss). The bill provided that "[t]he General Assembly shall have the power to regulate by law all matters which relate to the judges, time, place and manner of holding elections for Governor and of making returns thereof not affecting the tenure and term of office thereby" and provided that "all questions in relation to the number or legality of the votes given for each and any person voted for, as governor, and in relation to the returns, . . . shall be decided by the senate . . . ." Laws of 1836, Chapter 197, §§21-22 (ratified 1837) (Exhibit B). *See also* Everstine, The General Assembly of Maryland (1982) at 494 ("Questions about [the Governor's] qualifications and the votes he received were to be determined by the Senate.") Thus, the legislature, while implementing the public desire for direct elections, retained a role in the event of questions regarding the votes or returns of the election for Governor.

The question of what procedure should be followed in the event that the person who received the highest number of votes in the election was not constitutionally eligible for the office was addressed during the debates of the constitutional convention that adopted what became the Constitution of 1851. One amendment proposed that in such circumstances "the Governor shall be chosen by the joint ballot of the Senate and House

of Delegates." General Sketches of Debates (1851), Vol. I at 458 (Exhibit C). Mr. Gwinn offered a substitute amendment, which would have required instead a new election, offering the following rationale:

It is in the case in which people have, through fraud or misapprehension, been induced to cast their suffrage for one who was not constitutionally eligible, or have equally divided in their preferences for rival candidates. In such instances it would seem that there was paramount reason for permitting them to exercise again the privilege of which they had been defrauded, without aid, upon their part.

*Id.* at 458. This proposed substitute amendment was defeated, however, after a debate on the disruptions that would come from new "electioneering" for a new election. *Id.* at 459. The section was eventually adopted in essentially its current form, not allowing a new election, in the Constitution of 1851. See Laws of 1846, Chapter 342 (ratified 1851) (Exhibit D). The framers ultimately determined that Article II, §4 should not allow for a new or special election as a response to any gubernatorial vacancy. Compare Art. II, §4 and Art. II, §6(e) (no provision for new election) with Art. IV, §12 (providing for new election if House of Delegates decides election contest against judge, clerk of court, or register of wills).

The provisions of Article II, §4 were subsequently invoked by the General Assembly to decide a question relating to the legality of the election of a candidate for Governor. In the 1875 Democratic primary election for Governor, William T. Hamilton won the popular vote by a narrow margin. The party convention, however, nominated John Lee Carroll as the party's candidate. As the Legislature began its session in January of 1876, his opponent in the general election, J. Morrison Harris, challenged Carroll's right to be inaugurated. Exercising its authority under Art. II, §4, the Legislature

determined that Carroll should be inaugurated. Despite ample criticism from the press regarding the General Assembly's actions, *see* Everstine, *The General Assembly of Maryland 1850-1920* at 323, the substantive provisions regarding challenges to gubernatorial elections were never amended. *See* Exhibit E. To the contrary, the Constitution ratified in 1970 expanded the exclusive jurisdiction of the House of Delegates to include all questions regarding the "returns" and "to the number and legality of votes" in the election of Lieutenant Governor. *See infra* at p. 4.

**D. This Court Recognizes the Exclusive Jurisdiction of the House of Delegates**

In a series of cases, this Court repeatedly has stated that the doctrine of the separation of powers is one of the essential founding principles of our form of government. To determine whether the jurisdiction of a separate branch of government is exclusive, this Court applies a two stage analysis. The threshold question is whether the framers intended to qualify the jurisdiction of the House of Delegates. *Lamb*, 308 Md. at 303 (recognizing that the presence of specific language providing a role for court adjudication is a necessary, although not a sufficient, condition for justiciability). Only if the Constitution has qualified the legislature's jurisdiction, must the question of whether the controversy involves a ministerial activity or a nonjusticiable political question be decided. *Duffy*, 295 Md. at 63 (even if law amended to authorize a court to decide the controversy and void the election, such a provision might still present serious constitutional problems under provisions of the Maryland Constitution that vest jurisdiction in another governmental

body). Appellants' effort below to divest the House of Delegates of its exclusive jurisdiction fails at both stages.

That the clear purpose of the General Assembly was to confer exclusive jurisdiction to decide all questions regarding the election of the Governor upon the House of Delegates is further confirmed by comparing the language of Article II, §4 to the constitutional provisions governing the election of other State officials. For example, in Article III, §19, the power of the House of Delegates to decide questions relating to the elections and qualifications of its members was qualified by the framers so as to be subject to "the laws of the State." See Art. III, §19 ("Each House shall be the judge of the qualifications and elections of its members, as prescribed by the Constitution and laws of the State.") *Lamb v. Hammond*, 308 Md. at 304. It is this language that in effect incorporates other provisions of the Constitution bearing on elections and the statutes enacted pursuant to those other provisions:

Clearly, the framers had in mind that the Legislature would enact laws governing all phases of the conduct of elections, including elections for Senate and House of Delegates, and . . . they determined that any exercise of the prerogatives accorded the respective Houses by art. III, §19 be "as prescribed" by the Constitution and those laws. It is evident, then, that, although the ultimate power to judge the elections and qualifications of its members continues to reside in the Senate and House of Delegates, respectively, the exercise of that power is, to some extent, constrained by law.

308 Md. at 297.

Limited judicial involvement is permitted in contested General Assembly races only

because of the particular wording of Article III, §19. *Lamb v. Hammond* compels a different result under the significantly different wording of Article II, §4. Reviewing the history of Article III, §19, this Court pointed to the deletion of language making each House the "judge of the . . . returns of its members. . . ." 308 Md. at 296. This deletion "obviously was intended to have some meaning." 308 Md. at 296. Language committing to the House of Delegates "all questions in relation to . . . the Returns of [the gubernational] election, and the number and legality of votes therein" remains in Article II, §4. If the omission of such language from Article III, §19 "obviously was intended to have some meaning," surely the inclusion of the language in Article II, §4 must mean something too.

Where the constitution contains no language qualifying the exclusive jurisdiction of a separate branch of government the courts need look no further. Because the Constitution provides that in any contested election for judges, clerks or registers of wills, the House of Delegates "shall be the judge of the election and qualifications of the candidate," Art. IV, §12, "[a] contest over an election to [such] office must, of course, be made, if at all, before the House of Delegates." *Canvassers of Election v. Noll*, 127 Md. 296, 299 (1915). *Lamb*, *Duffy*, and *Noll* thus all require courts to refrain from involvement when unqualified language, such as that contained in Article II, §4, confers exclusive jurisdiction upon the General Assembly.

The residual authority provided in Art. I, §8, to the General Assembly to "make provisions for all cases of contested elections of any of the officers, not herein provided for," does not limit the effect of Article II, §4. That delegation exists for elections for



which the Constitution makes no provisions. The election of the Governor does not fall within this category, because the Constitution does "provide for" both the process of election of Governor and the mechanism to contest that election. Article I, §8 has never been read to confer authority upon the General Assembly to enact statutory provisions for elections, such as those for judges, clerks, registers of wills, and Governor, for which the Constitution does provide. Such an interpretation would render Art. II, §4 surplusage, a result not permitted by basic principles of constitutional interpretation. *Holman v. Kelly Catering*, 334 Md. 480, 485 (1994); *In re Wallace W.*, 333 Md. 186, 192 (1993) (holding that it is a "fundamental rule of statutory construction . . . that no word, clause, sentence or phrase should be rendered surplusage, superfluous, meaningless, or nugatory.").

Under provisions like Art. IV, §12, "the jurisdiction of a governmental body like the House of Delegates is exclusive," and statutory provisions to the contrary are necessarily unconstitutional. *Duffy v. Conaway*, 295 Md. at 263 n.14. Thus, the provisions of the Election Code referring to procedures for resolving contested elections, *see* Art. 33, §19-1, can only be read in the context of the Constitution as excluding from its scope any elections, such as those involving the Governor and Lieutenant Governor, for which the Constitution has made provision. This fact was recognized by the General Assembly in 1985, when it omitted any reference to constitutionally authorized elections, such as those for Governor, from Art. 33, §19-1 after being advised that the House of Delegates had exclusive jurisdiction over such questions. *See* Opinion of the Attorney General, No. 84-004 (Jan. 30, 1984) (unpublished) (Exhibit F). *See generally Burning Tree*, 315 Md. 254, 297-300 (1989) (pre-enactment Attorney General advice bears on

legislative intent).<sup>8</sup>

A plaintiff may not interfere with the House of Delegates' prerogative to decide the ultimate political question: whether someone other than the person certified as the winner of a gubernatorial election should serve as Governor of Maryland. This is precisely the kind of "political question" that this Court recognizes exceeds the jurisdiction of the courts. *Lamb*, 308 Md. at 304 (holding that state courts may not prevent or "enjoin the House of Delegates from deciding a contest properly presented to it").

The framers of the Maryland Constitution made a fundamental choice: a dispute over who really won an election for Governor is so important a matter, with enormous political and policy stakes, that it must be decided by the elected representatives of every Marylander, rather than by the judiciary. Whether the framers made the wisest decision is beside the point. The Constitution defines the role of each branch of government and the Constitution cannot be clearer.

## **II. THE DECISION BELOW MUST BE AFFIRMED**

The right to vote is basic. See *Lamb v. Hammond*, 308 Md. at 303. So too is the right of voters to have their votes counted. See *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). Appellants' election contest is a frontal assault on this basic right. It is an unprecedented attempt to invalidate a statewide election and to disenfranchise approximately 1.4 million votes largely on the basis of tenuous voter qualification

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<sup>8</sup> The General Assembly was clearly aware of the Attorney General's view that the courts could not be given jurisdiction over a general election contest for a constitutional officer such as the Governor. Not only was the opinion addressed to the sponsor of the legislation, but the Counsel to the General Assembly briefed key members of the House Committee that would consider the legislation on the contents of the opinion on two occasions. See Minutes, Constitutional and Administrative Law Committee Workgroup on Election Laws dated July 25, 1984 and August 1, 1984 (Exhibit G).

## APPENDIX N

STATE OF MARYLAND

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### OFFICE OF THE STATE PROSECUTOR

November 17, 1997

William G. Somerville  
Counsel to the Commission  
to Revise the Election Code  
Legislative Service Building  
90 State Circle, Room 116  
Annapolis, MD 21401

RE: Comments on Amendments  
to Election Code Title 24  
Offenses and Penalties

Dear Mr. Somerville,

Our comments on the Commission draft of revisions to the Offenses and Penalties provisions codified in Article 33, Subtitle 24 are as follow:

A. Regarding Possible Prosecutorial Problems

1. Statute of Limitations

The chief problem in prosecuting offenses under the election code has been the two-year statute of limitations prescribed for ordinary misdemeanors by *Courts and Judicial Proceedings Article, Section 5-106(f)*. Except for felonies, penitentiary misdemeanors and unintentional violations under Article 33, Section 25-20A of the Code, the two-year statute of limitations usually results in no prosecution. Although the problem occurs primarily in detecting and prosecuting campaign finance violations, it can also occur in three types of violations covered by the proposed amendments.

We note three proposed sections in which the offenses are designated as ordinary misdemeanors rather than penitentiary misdemeanors for which there is no statute of limitations. These are:

|                            |  |
|----------------------------|--|
| Section 16-20 <sup>b</sup> | Offenses <del>Relating to Voting</del> as to Ballots and Balloting |
| Section 16-301             | Neglect of Duties; Corrupt or Fraudulent Acts                      |
| Section 16-401             | Offenses Relating to Petitions                                     |

In balloting offenses, under Section 16-201, the violation may be reported long after an election, which severely restricts the investigatory period. When questions arise as to legal residency the investigation can be extensive and time consuming.

In offenses involving corrupt or fraudulent actions by election officials, under Section 16-301, we have other problems besides limitations, which will be discussed in subsequent paragraphs.

Under offenses relating to petitions in Section 16-401 the investigation may involve reviewing thousands of petitions and questioning hundreds of witnesses, as well as handwriting analysis.

All of the above involve deceptive practices which we believe should be treated differently than violations which are *malum prohibitum*, i.e., prohibited by statute and not necessarily wrongs in themselves. In the latter offenses the prosecutor need only prove that the offender perpetrated the prohibited act. In the former the prosecutor must prove the willful and knowing intent to commit the act, a more laborious and time-consuming investigatory process.

2. Section 16-301. Neglect of Duties; Corrupt or Fraudulent Acts

This section is beset with the same problems, which we encountered in our investigation of the 1994 General Election. In that election the Administrator of the Baltimore City Board of Supervisors of Elections was accused of "willful neglect" of her duties.<sup>1</sup>

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<sup>1</sup> See our Report of Allegations and Findings Concerning the 1994 General Election, Office of the State Prosecutor, August 1995, pages 80 et seq. (Pages attached as Enclosure 1)

It is noted that the amended statute does not define an "election official". Although this may seem obvious, criminal statutes require strict proof of those who are members of a class named in the statute. For example; is a mere employee of the Board, as is the case of the Board's Administrator, an "election official" who is liable for criminal prosecution under Section 16-301? Where are the duties prescribed for a Board Administrator for whom he/she can be held culpable for willful neglect? Under the proposed revision it is our opinion that a local Board Administrator, who probably occupies the most important executive position in the administration of election laws in the various jurisdictions, cannot be prosecuted under this section; nor can he/she be prosecuted for misconduct in office for the reasons stated in our report on the 1994 General Election.<sup>2</sup> This does not mean that the local Board Administrator cannot be prosecuted for some underlying crime such as theft under a different statute, which has nothing to do with the performance of official duties.

Another problem with Section 16-301 is the term "willful neglect". This term has been used in civil proceedings involving trustees, attorneys and judges who neglect their duties, but it is improbable that a prosecutor would seek criminal prosecution for the non-performance of duties mandated by the Legislature unless a corrupt purpose is involved. Since the duties of a Board Administrator are not defined by statute, he/she cannot be said to have willfully neglected them. In such cases we would refer the neglect of delegated duties to the Board for administrative discipline.

We also note that Section 16-301 designated corrupt or fraudulent acts as ordinary misdemeanors, which trigger the two-year statute of limitations. Although the same limitations apply to misconduct in office, which usually involves corrupt motives, we urge that such acts by election officials be made penitentiary misdemeanors. A violation of trust in the administrations of election laws seems to be for more insidious than other crimes designated as penitentiary misdemeanors in the Election Code.

#### B. Regarding Penalties

It appears that the Commission is seeking a rational scheme regarding the penalties for election law violations. The current penalties offer no rational basis and seem to be outdated. We offer the following as possible guidelines.

It seems desirable to group offenses in three different categories such as:

- (1) Felonies – those acts which corrupt the voting system so as to alter or subvert the will of the majority of voters. Among these we would group the following:

bribing or threatening physical or economic harm in an attempt to influence other voters;

destroying or altering ballots;

tampering with, altering or destroying election records;

falsifying petitions or election records;

tampering with electronic voting systems;

destroying or tampering with voting equipment;

These are crimes of intent, deception and outrageous acts which offend the very nature of a fair and honest election process. The most serious penalties should be reserved for these offenses and we recommend finer up to \$50,000 and/or imprisonment for up to 10 years or both for these offenses.

- (2) Penitentiary Misdemeanors – those acts which are less serious than the enumerated felonies above, but for which there should be no statute of limitations. They should be crimes involving willful and knowing violations of the law which endanger the election process such as;

false voting, attempting to vote more than once or when not qualified to vote;

false registering;

corrupt or false acts by officials;

interfering with voters at the polling places;

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<sup>2</sup> *Ibid.*, pages 82-85.

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November 17, 1997  
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offenses related to certificates of candidacy;

false oaths;

We recommend penalties of fines up to \$10,000 and/or imprisonment for up to 5 years or both for these offenses. These would not apply to perjury, which now carries only a jail sentence for not more than 10 years.

- (3) Ordinary Misdemeanors – those acts which are prohibited by statute because they interfere with a peaceful and orderly election and for which no intent is necessary. These are acts known as *malum prohibitum*, such as:

disobeying election officials;

disturbing the peace at the polls;

interfering with election officials;

issuing alcoholic beverages at polling places;

wagering on elections;

We recommend penalties of fines up to \$1,000 and/or imprisonment up to one year or both for these offenses.

We do not recommend minimum sentences for any of the above offenses regardless of seriousness. Courts generally frown on minimum or mandatory sentences.

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We believe sentencing should be left to judicial discretion subject to maximum limits set by the Legislature.

Sincerely,

A handwritten signature in black ink, reading "Stephen Montanarelli". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

STEPHEN MONTANARELLI  
State Prosecutor

SM:daa

Enclosure/s  
a/s

cc: Carmen Shepard



performed annually for the City Board upon request and it did not involve a significant workload for BOMIS.

It is significant to us that Ms. Jackson never informed the Board or anyone other than Ruth Mankins of her conversation with Mr. Huculak. We conclude that Ms. Jackson either forgot to issue the transmittal to BOMIS, neglected or omitted to do so, or misunderstood a conversation with Mr. Huculak. There is no evidence that she had a corrupt purpose or that she conspired with anyone to allow ineligible voters to remain on the registered voters' lists.

### 3. Analysis

The first question is: does Ms. Jackson's failure to perform the "five year purge" of voters constitute a criminal violation of the Election Code?

Article 33, Section 24-3 of the Maryland Annotated Code makes it a crime for any election official to "willful[ly] neglect" to perform any duty required of that official by state election laws. Assuming that Ms. Jackson is an "election official" under the statute<sup>26</sup>, establishing criminal liability for failing to conduct the five year purge would require the State to prove that: (1) Ms. Jackson had a duty under state election law to perform the five year purge; and (2) that she willfully neglected to perform that duty or engaged in "corrupt or fraudulent conduct or practice" in executing that duty.

We must determine, therefore, whether Ms. Jackson had a legal duty to perform the five

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<sup>26</sup>The language of Section 24-3 imposes the willful neglect standard on "...any judge, or any officer or official of registration, revision, election or canvass or any member of any committee, or of the governing body, of any political party participating in primary elections under this article, or any delegate to a convention or party executive...". While it is questionable whether this language encompasses an administrator of a local Board of Elections, such as Ms. Jackson, we assume for purposes of the report that the statute would apply to Ms. Jackson.

year purge. Article 33, Section 3-20 spells out the requirement that a five year purge be conducted annually. The statute provides, in pertinent part:

If a registered voter has been registered but has not voted at least once in a primary, general or special election within the five preceding calendar years, *it shall be the duty of the board*, unless cause to the contrary be shown, to cause the registration of that voter to be cancelled. [emphasis added].

The statute places the duty of performing the five year purge squarely on the City Board not on its administrator. Accordingly, we conclude that Ms. Jackson cannot be prosecuted under Section 24-3 for failure to perform the five year purge.

Even assuming the Board expressly delegated the duty to perform the purge to Ms. Jackson, Section 24-3 of Article 33 requires that the duty "...be required by this article [Article 33] or by any other election law of this state...". The statute expressly requires that the duty be imposed by law, not delegated by a local board of elections. Therefore, there can be no criminal liability under Section 24-3 for failure to perform a delegated duty. Accordingly, Ms. Jackson cannot be prosecuted even if the duty to perform the purge were expressly delegated to her by the board of elections.

Furthermore, even if Ms. Jackson were charged by statute with the duty to perform the five year purge, there are questions as to exactly what the duty to purge requires, and, accordingly, whether it was in fact breached. Article 33, Section 3-20 does not prescribe when the five year purge is to be performed. Article 33, Section 3-20(c) provides:

Annually the board shall determine which persons have not voted at least once at a primary, general, or special election within the five calendar years preceding January 1 of the current year and send those persons the notice required in subsection (a) of this section.

The statute requires that the purge be performed "annually." It does not expressly require that the purge be performed before the election. Ms. Jackson indicated in her trial testimony and in her interview with investigators from this Office that she decided in the spring of 1994 that, due to a heavy workload in the office, the five year purge for 1994 would not be completed until after the November election. Since the statute does not require that the purge be performed prior to the election, Ms. Jackson's decision to delay it until after the election does not appear to be a violation of Article 33, Section 3-20(c).<sup>27</sup>

The next question is whether Ms. Jackson's failure to perform the five year purge constitutes the common law crime of misconduct in office. Under Maryland law, misconduct in office consists of "corrupt behavior by a public officer in the exercise of the duties of his office." *Duncan v. State*, 282 Md. 385, 384 A.2d 456, 458 (1978). To prove misconduct in office, therefore, the state must first prove that Ms. Jackson, as administrator to the Baltimore City Board of Elections, is a "public officer" or "public official" under Maryland law.

Maryland courts have not had occasion to consider the definition of "public official" in the criminal context. A well-established test for determining whether a position constitutes public office has been widely employed in Maryland in civil cases, however, and, given the lack of any alternative Maryland definition, we find it applicable here. The test requires the consideration of five factors:

- (1) The position was created by law and casts upon the incumbent duties

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<sup>27</sup>Once the November election was over, Ms. Jackson was instructed by the Attorney General's Office not to conduct the five year purge because of a new federal statute known as the "Motor Voter" law and the investigation which was taking place. Accordingly, it is highly questionable whether she could be held criminally liable for her failure to conduct the 1994 purge after the election, as she had planned to do.

which are continuing in nature and not occasional;

- (2) The incumbent performs an important public function;
- (3) The position has a definite term for which a commission is issued, a bond posted and an oath required;
- (4) The position is one of dignity and importance;
- (5) The position calls for the exercise of some portion of the sovereign power of the state.

*See Duncan v. Koustenis*, 260 Md. 98, 271 A.2d 547, 550 (1970); *Moser v. Howard County Board*, 235 Md. 279, 201 A.2d 365 (1964); *57 Opinions of the Attorney General*, 595, 596 (1972).

Maryland courts have indicated that the two most important of these factors are: (1) the requirement of an oath, and (2) that the "...public servant exercises in his own right some sovereign power of government for the benefit of the public." *72 Opinions of the Attorney General*, 286, 288, citing *Duncan v. Koustenis*, *supra*. See also *Gary v. Board of Trustees*, 223 Md. 446, 165 A.2d 475, 478 (1960).

Applying the second and fourth factors requires little analysis. There can be no doubt that a local election administrator such as Ms. Jackson "performs an important public function," or that the position is one of "dignity and importance."

Ms. Jackson's position, however, does not meet any of the remaining requirements set out in the five part standard. First, the position of administrator of the Baltimore City Board of Elections is not a position "created by law." Article 33, Section 2 of the Maryland Code creates the local election board and sets forth its duties. Nowhere in the State Election Code or the Maryland Constitution, however, is the position of administrator of a local board created.

Second, the position is not for a definite term, and no oath for the position is required. Article 1, Section 9 of the Maryland Constitution sets forth which public servants are required to take an oath of office: "Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto..." must take an oath. As previously indicated, the administrator of a local board is not a position created by the Constitution or the laws of Maryland. Therefore, no oath is required.

Finally and most important, however, is the fact that a local administrator does not, in our view, "exercise the sovereign power" of the State. Although there is no precise formula for determining whether a public servant exercises the sovereignty of the State, our interpretation of Maryland law suggests that the key to this question is whether the occupant of the office has been *specifically empowered by law to exert state authority in his own right*. See *Gary v. Board of Trustees*, 165 A.2d at 479-80. See also 79 *Opinions of the Attorney General* — (1994) [Opinion No. 94-046 (September 8, 1994)] ("To exercise a portion of the sovereign power is to exercise in one's own right 'some of the functions of government' that can be validly performed only pursuant to a specific grant of governmental power.").

A local elections administrator does not fall within this definition. An administrator of a local board of elections is not empowered by law to make policy decisions, issue rulings, arrest people or exert any state authority in their own right. Rather, the only duties and powers of a local administrator are those assigned by the local Board of Elections.

The members of the local Board, on the other hand, are public officials. Their offices and duties are created and imposed by statute. See Article 33, Sections 2-1, 2-2, *Maryland Annotated Code*. The fact that the Board chooses to hire employees, such as an administrator, to assist

in carrying out its legal obligations does not make those employees public officials. *S. Baltimore City v. Lyman*, 92 Md. 591, 612, 48 A. 145, 146 (1901) (holding that superintendent of schools was not municipal official but rather an employee because "[he] exercises no power except what is derived in and through his board").

Therefore, we conclude that an administrator of a local Board of Elections is not a public officer under Maryland law. Ms. Jackson cannot be prosecuted for common law misconduct in office for failure to perform the "five year purge."

Our reasoning above also applies to the allegation that Ms. Jackson submitted a materially inaccurate report to SABEL. This report states that in January 1994, there were 14,955 "removals" for "Failure to Vote, 5 years".

As we stated in our findings, we believe that the data represents the total number of voters purged in 1993 based on the BOMIS report of December 13, 1993, which shows 14,393 voters removed in 1993 for failure to vote. Although the totals are slightly different there are no monthly reports to SABEL during 1993 which show any voters removed for that reason. We found that the 14,955 number on the January 1994 report erroneously and inexplicably was reported in that month when it should have been reported in the December 1993 report. Although neither Ms. Jackson nor her secretary can explain how this occurred, we believe that it is a reasonable conclusion.

Assuming for the purpose of this analysis that the January, 1994 report is "materially inaccurate," it is not Ms. Jackson's duty, as required by law, to submit the report. Section 3-9A(c) of Article 33 states as followed:

(c) Duty to Provide Reports and Other Registration Data - Each board shall provide reports of registration and other registration related activity as may be required by the State Administrative Board of Election Laws.

The monthly report showing activity on registration lists is required by SABEL of each local board. It is on a form designed by SABEL and it is clearly the duty of the local board and not its administrator to submit the report. It is the duty of the local board to insure that the report is accurate and timely submitted in the prescribed format. Ms. Jackson can not be held criminally accountable for false statements appearing on the monthly reports for the same reason that she can not be held criminally liable for the failure to accomplish the five-year purge in 1994. It is not her duty.

This reasoning may seem legalistic and impractical. How is the City Board for example, to know whether or not reports prepared by its administrator are accurate? That is not the issue when criminal charges are considered. The issue is whether or not the administrator was charged with a legal duty which she failed to perform.

The Board has administrative remedies for insuring proper reporting just as it has such remedies for insuring that all its employees perform the duties delegated to them by the Board.

Since it was the City Board's duty to provide the report requested by SABEL, as well as to accomplish the five-year purge, the question may arise - Can the Board be prosecuted? We do not believe that the conduct of the Board members in either case involved wilfully negligent omissions. There is no evidence that the Board acted corruptly. Lacking such evidence, we decline to consider charging the Board members under Section 24-2(10), for wilfully omitting to do an act directed to be done under Article 33; Section 24-3 for wilfully neglecting a duty required in Article 33, or; for misconduct in office.